TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 356.

SAMUEL H. STONE, AUDITOR; CHARLES FINLEY, SECRETARY OF STATE, AND G. W. LONG, TREASURER OF THE COMMONWEALTH OF KENTUCKY, CITY OF LOUISVILLE, ET AL., APPELLANTS,

vs.

THE PRESIDENT, DIRECTORS, AND COMPANY OF THE BANK OF KENTUCKY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF KENTUCKY.

FILED AUGUST 13, 1898.

(16,941.)

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1 Proceedings of the circuit court of the United States for the district of Kentucky, at its regular term begun and held at the Federal court hall, in the city of Louisville, on February 21, 1898.

Present: Honorable John M. Harlan, circuit justice; Honorables W. H. Taft and H. H. Lurton, circuit judges.

PRESIDENT, DIRECTORS, AND COMPANY, BANK OF KENTUCKY,
Complainant,
versus
S. H. STONE, &c., Defendants.
} 6555.

Be it remembered that heretofore, to wit, on April 17, 1897, came the complainant, President, Directors, and Company of the Bank of Kentucky, by its counsel, Humphrey & Davie, and filed in the clerk's office of our said court their bill of complaint against the above-named defendants, S. H. Stone, etc., which bill of complaint and exhibits are in the words and figures as follows, to wit:

To the judges of the circuit court of the United States for the sixth circuit and district of Kentucky:

The President, Directors, and Company of the Bank of Kentucky bring this their bill of complaint against Samuel H. Stone, Charles Finley, G. W. Long, City of Louisville, County of Franklin, and the Board of Councilmen of the City of Frankfort; and thereupon the complainant says:

I.

The complainant is a corporation duly created by and organized under the laws of the State of Kentucky, and a citizen of said State.

2 II.

The defendant, Samuel H. Stone, is the auditor of public accounts of the State of Kentucky. The defendant, Charles Finley, is the secretary of state of the State of Kentucky. The defendant, George W. Long, is the treasurer of the State of Kentucky. The defendant, The City of Louisville, is a municipal corporation duly created by and organized under the laws of the State of Kentucky. The County of Franklin is a municipal corporation duly created by and organized under the laws of the State of Kentucky. The Board of Councilmen of the City of Frankfort is a municipal corporation duly created by and organized under the laws of the State of Kentucky.

III.

The complainant was created a body politic and corporate by an act of the General Assembly of Kentucky, approved February 2, 1834. By this act it was given full power and authority to acquire, hold, possess, and enjoy all such real estate, goods, effects, and chattels as should be convenient for the transaction of its business, and which might be conveyed to it as surety for any debt. It was directed that it should have and keep its principal office of discount and deposit in the city of Louisville, and that it might have offices of discount and deposit in other parts of the State. Its business was declared to be that of loaning money, discounting promissory notes and bills and dealing in exchange; and it was given authority to issue bills or bank notes, payable to the bearer, on demand, at any of its offices of discount and deposit, but not of less denomination than five dollars. It was given the general powers of a banking corporation. It was provided that it should locate a branch at the seat of government, to aid in the management of the fiscal affairs of the State.

It was provided that the State of Kentucky should subscribe to its capital stock, and that the governor of the Commonwealth should annually nominate, and, with the advice and consent of the senate, appoint three directors on the part of the Commonwealth, who should hold their office until their successors should be duly appointed and qualified. The said corporation was duly organized under the terms of the said act of incorporation, and its corporate life has ever since continued; and it has performed all of the duties imposed upon it by its act of incorporation and the amendments thereto, and the laws of the land. It duly established and has ever since maintained a branch at Frankfort, and has fully performed all its duties as fiscal agent of the State.

IV.

By its original charter, which, as aforesaid, was approved February 22, 1834, it was provided that the complainant should continue a body politic and corporate until the 1st day of October, 1864.

By an act of the General Assembly of Kentucky, approved February 15, 1858, it was provided that the charter privileges of the complainant should continue in full force for twenty years from the
1st of October, 1864; but this extension was declared to be sub-
3 ject to certain restrictions, among others (1) that the bank
should be subject to all the restrictions, limitations, penalties, conditions, and duties imposed upon it by this act of incorporation and the acts amendatory thereto; (2) that the legislature should at all times have the power to prohibit the issue of bank notes under the denomination of five dollars; and after 1875, of notes under the denomination of ten dollars; (3) that the stockholders should, within one year from the 10th of May, 1858, by a vote of a majority given at a stated or called meeting, determine whether they would accept the proposed extension; and the said bank accepting the provisions of the act, was required to notify the governor of the Commonwealth of the acceptance, by the certificate of the president and directors of such bank, and when such notice was thus given, the act was to be considered in full force and effect.

There were other provisions in this act of extension not necessary to be here mentioned, but the complainant fully complied with all of them, and, among other things, complied with the requirement of the acceptance of the act by its stockholders, and of the certificate of the president and directors of such fact.

By another act approved February 1, 1872, it was provided that the complainant was authorized and empowered to purchase, from commissioners of the sinking fund, the stock of the bank owned by the State; and that from and after the purchase of this stock the right of the State of Kentucky to appoint and retain directors in said bank should cease.

This stock was purchased as provided in this act.

It was further provided that its charter should be and thereby was extended twenty-five years.

The complainant complied with all of the provisions of this act of February 1, 1872, and so it is that its charter life will not expire until October 1, 1909.

V.

By the 15th section of its original charter it was provided as follows:

"SECTION 15. It shall be the duty of the cashier of the principal bank, on the 1st day of July, 1836, and on the 1st day of July in each succeeding year, during the continuance of this charter, to pay to the treasurer of this Commonwealth twenty-five cents on each one hundred dollars of stock held and paid for in said bank, which shall be in full of all tax and bonus, provided that the legislature may increase or diminish the same; but at no time shall the tax exceed fifty cents on each one hundred dollars of stock paid for in said bank."

By an act approved February 12, 1836, entitled, "An act to increase the revenue," the legislature exercised the right reserved in the above section, and imposed a tax of fifty cents on each share of stock of the complainant—a taxation then largely in excess of the ordinary rate of taxation paid by other moneyed capital or property in the State of Kentucky.

By the act approved February 1, 1872, it was provided that the bank should annually, on the first day of January, pay into the treasury, to go into the revenue proper, a tax of fifty cents
4 on each share of one hundred dollars of its increased capital stock, which should be in full of all tax and bonus on such increased capital stock.

The complainant says, however, that its stock as it now exists, is very much less than that originally authorized by its charter. The original amount authorized was $5,000,000, whereas its present capital stock is only $1,650,000.

The complainant paid, each year, the tax thus levied upon it, down to July 1, 1886, from which time it has paid a different amount, as will be hereinafter explained.

VI.

The complainant says that by the settled course of decision of the highest court of this State, the meaning of these provisions in its charter has been fixed and determined; that on November 1, 1838, it was determined by the court of appeals of Kentucky (which is the highest court of said State) that this language prevented the Commonwealth from taxing the stockholders of the bank, and constituted a contract with the State which was inviolable, and a limitation on the legislative power to tax the stock of the bank or its property; that by a decision rendered by the said court of appeals on the 24th of November, 1869, it was determined that this language meant to include taxation by any of the municipal subdivisions of the State, and prevented such municipal subdivisions from taxing the real estate of the bank, although situated within their boundaries.

By a decision rendered by the same court on June 5, 1888, it was determined (confirming the judgment of the Franklin circuit court) that the said 15th section as aforesaid constituted a contract between the complainant and the State, by which the State would not tax the complainant at a greater rate than fifty cents on each one hundred dollars of stock; that this included all taxation of all kinds—State, county, and municipal—and upon all kinds of property of the said bank.

VII.

On March 18, 1876, there was approved an act of the legislature of Kentucky, entitled "An act to make taxation equal and uniform in counties where an *ad valorem* tax is levied by the county court."

By the second section of this act it was made the duty of the chief officer of any bank doing business or owning property in the county to list with the assessor all the property of the bank.

By the third section of the act it was provided that all the property thus listed and assessed should be subject to an equal and uniform rate of taxation.

Under this act the Franklin county court, being the fiscal authority of the defendant, The County of Franklin, attempted to assess, for county taxation, the property and choses in action of the complainant situated in Franklin county, where was situated one of its branches. Thereupon the complainant filed a bill in equity in the circuit court of Franklin county against the said Franklin County Court, and prayed for an injunction against the said Franklin County Court, enjoining and restraining it from endeavoring
5 to collect any tax on the basis of such assessment. In said suit the complainant set forth and claimed its contract with the State by virtue of the provisions of its charter as hereinbefore set out, and claimed that the same was inviolable, and that the act of 1876, so far as it attempted to repeal or impair the same, was unconstitutional and void. The said Franklin County Court, being duly brought before the court, the cause came on for hearing, and resulted in a judgment establishing the right of the complainant to relief upon the basis of its said contract, and enjoining the said Franklin County Court from endeavoring to enforce the said assessment.

About the same time the defendant, The Board of Councilmen of the City of Frankfort, caused certain real estate belonging to the complainant, and situated in the city of Frankfort, to be assessed for taxation, and attempted to collect taxes thereon; whereupon the complainant filed a bill against the Board of Councilmen of the City of Frankfort, in said Franklin circuit court, making similar allegations to those above mentioned in reference to the suit against the Franklin County Court, and praying for an injunction against the Board of Councilmen of the City of Frankfort, restraining them from attempting to collect the said tax against the complainant's real estate.

And this cause coming on to be heard, judgment was rendered in this cause also; and thereupon the said Board of Councilmen of the City of Frankfort was perpetually enjoined and restrained from attempting to collect the said tax.

In both of these causes the contract between this complainant and the State of Kentucky, as hereinbefore set up, was fully pleaded and alleged, and relief was asked upon the basis thereof; and in each of the cases the court adjudged that the said contract was in existence and continued during the charter life of the said bank as extended; and rendered judgment accordingly.

Each of these defendants, The Franklin County Court and The Board of Councilmen of the City of Frankfort, prayed an appeal to the court of appeals from this judgment; and the causes coming on to be heard in the court of appeals, the judgment in each was affirmed by the said court of appeals, the said court holding that the 15th section of the complainant's charter was a contract by which the legislature could tax the complainant at the most 50 cents on each one hundred dollars of its stock; that this was in lieu of all other taxation of every kind—State, county, and municipal—upon the property of every kind of the said complainant; that the said contract existed not only during the original charter life of the complainant, but during the charter life of the complainant as extended by the two acts above referred to; and that neither of the said acts was repealable by the State of Kentucky, but both of them were beyond the power of the legislature to repeal, amend, or modify. The complainant pleads and relies on these judgments as conclusive upon defendants, and files a duly certified copy of the record in said causes.

6 VIII.

By an act approved May 17, 1886, entitled "An act to amend the revenue laws of the Commonwealth of Kentucky," it was provided that the cashier of all State and national banks should annually, on the 1st day of July of each year, make report of their condition to the auditor, and should pay into the State treasury 75 cents on each share of their capital stock, and should, in addition, pay into said treasury on their surplus, undivided profit, and accumulations in excess of 10 per cent. of their capital stock, a tax at the same rate as the real property should be assessed; and it was distinctly provided by the act that the said taxation should be in full of all tax—State, county, and municipal—except that the real estate and buildings owned and used by the banks in conducting their business should not be exempted from taxation for municipal or county purposes; and that such real estate alone might be taxed for county and municipal purposes, as other real estate was taxed. As a condition to its operation upon any of the banks referred to therein, said act, in the fourth section thereof, provided as follows:

"SECTION 4. Each of said banks, institutions, and corporations, by its proper corporate authority, with the consent of a majority in interest of a quorum of its stockholders at a regular or called meeting thereof, may give its consent to the levying of said tax, and agree to pay the same as hereinafter provided, and waive and release all right under the act of Congress or under the charters of the State banks, to a different mode or a smaller rate of taxation; which consent and agreement to and with the State of Kentucky shall be evidenced by writing, under the seal of said bank, and delivered to the governor of the Commonwealth; and said agreement and consent being delivered, and in consideration thereof, such bank and its shares of stock shall be exempt from all other taxation whatsoever, so long as said taxation shall be paid, during the corporate existence of the bank."

The consent provided for by this act, and the notice to the governor, were further required to be given before the next meeting of the General Assembly, provided the tax should be paid by the bank from the passage of the act.

At a meeting of the stockholders of the complainant on June 25, 1897, a quorum of the stockholders and a majority thereof being present, such stockholders, and a majority in interest thereof, did give their consent to the levying of said tax, and to the waiver and release of all right under its charter to a different mode of and a lower rate of taxation; and said consent of the complainant to the waiver and release aforesaid, and the said agreement, was certified in writing, under the seal of the bank, by the proper corporate authority, to the governor of the Commonwealth, and delivered to him before the next meeting of the General Assembly after the passage of said act. The complainant files herewith as part hereof a duly certified copy of such resolution, consent, and agreement, marked "Exhibit A."

7

IX.

The complainant, through its cashier, made its report and paid into the State treasury, on July 1, 1886, the full tax required by the act described in the foregoing paragraph, and which is commonly known as the "Hewitt act;" and in conformity with said Hewitt act, has made its reports in proper form to the auditor of public accounts on the 1st day of July in each and every year up to this time; and until the year 1893, paid into the State treasury, on or about the 1st day of July of every year from 1886 the full tax required by the said Hewitt act, being seventy-five cents on each share of its capital stock, and a tax at the same rate as real property was assessed by the State upon its surplus, undivided profits, and accumulations in excess of ten per cent. of its capital stock. These reports continued to be made by the complainant, but on July 1, 1893, the auditor refused to receive the tax under the Hewitt law, although the complainant tendered the same. He refused to receive it on the first of July, 1894, although the complainant again tendered the same. The complainant paid the same about the 1st of July, 1895, and on or about the first of July, 1896, and in the spring of 1896, at the request of the auditor, and after certain litigation hereinafter mentioned had been determined in its favor, paid to the auditor the difference between the amount paid by it on July 1, 1893, and July 1, 1894, and the amount which it tendered at these times and which was the amount due under the Hewitt law; so that it is now true that the complainant has every year, down to and including 1885, paid the full tax called for under its charter and from 1886 to 1896, the full tax called for under the Hewitt law. It has, also, during this period (1886 to 1896) paid in full to the municipalities where its banking-houses are situated the full county and municipal tax thereon.

The legislature of Kentucky passed an act which went into force on November 11, 1892. The third article of said act dealt with the assessment of certain corporations, among others, banks. By this act it is provided in substance that every incorporated bank shall, in addition to other taxes imposed on it by law, annually pay a tax on its franchise to the State, and a local tax thereon to the county, incorporated city, town or taxing district where its franchise may be exercised. The auditor, treasurer, and secretary of state are by said act constituted a board of valuation and assessment for fixing the value of said franchise. It is provided that in order to determine the value of the franchise the banks shall each file reports on or before the 1st day of March in each year, which reports shall be made up to include the 31st day of the preceding December. These reports are to be verified by a chief officer of the bank, and show the following facts: The name and principal place of business of the bank; the amount of capital stock; number of shares; amount of stock paid up; nominal and real value thereof; highest price at which such stock was sold at a *bona fide* sale within twelve months next before the 15th day of September of the year in which the statement is required to be made; amount of surplus funds and undivided profits, and the value of all other assets; total amount of indebtedness as principal; amount of
8 gross or net earnings or income, including interest on investments and income from all other sources for twelve months next preceding the 31st day of December of the year in which the statement is required to be made; the amount and kind of tangible property in the State, and where situated, assessed or liable to assessment in the State; and the fair cash value thereof, estimated at the price it would bring at a fair voluntary sale; and such other facts as the auditor may require.

Upon this information, and such other information as the board can obtain, it is authorized and directed to fix the value of the capital stock of the bank, and from the amount thus fixed, to deduct the assessed value of all tangible property assessed in the State or in the counties where situated; and the remainder thus found is to be the value of the corporate franchise subject to taxation under the said act.

It is further provided that the said board shall apportion the value of such franchise among the several taxing jurisdictions entitled to a share of such tax.

It is further provided that the auditor of the State, at the expiration of thirty days after the final determination of such values, shall certify to the county clerk of the counties where any portion of the corporate franchise of such banks shall be liable to local taxation, the amount thereof liable for county or State taxes; and such certificate is, by the county clerk, to be filed in his office, and by him certified to the collecting officer of the county and city for collection.

It is further provided that the taxes assessed by the State board of valuation and assessment shall be due and payable on July 1st succeeding such report.

It is further provided that in the event the banks fail to make such report and pay such tax a penalty of ten per cent. on the amount of the tax shall attach, and thereafter such tax shall bear interest at the rate of ten per cent. per annum; and any bank or trust company failing to pay its taxes, penalties, and interest after becoming delinquent, is to be deemed guilty of a misdemeanor, and upon conviction is to be fined for each day it remains unpaid; to be recovered by indictment or civil action, of which the Franklin circuit court shall have jurisdiction.

X.

The complainant states that the amount of its capital stock on the 31st day of December, 1894, on the 31st day of December, 1895, and on the 31st of December, 1896, was $1,645,100, and its surplus upon each date more than $1,000,000; that the amount of the value of its capital stock as fixed by the board of valuation and assessment as of December 31, 1892, was $2,671,559.58, of which there was apportioned to the city of Louisville $2,476,559.58, and to the city of Frankfort and Franklin county about $190,000; that this was substantially the same valuation and apportionment as of December 31, 1893; and this would be substantially the same valuation and apportionment as of December 31, 1894, December 31, 1895, and December 31, 1896; that the tax rate in the city of Louisville for
the year 1895 was $1.88; for 1896, $1.85; for 1897, $1.85;
9 that the tax rate for the county of Franklin for the year 1894
was 56⅔ cents; 1895, 56⅔ cents; 1896, 55 cents. The tax rate for 1897 has not yet been fixed, but will be approximately 55 cents. The city tax for the town of Frankfort was $1.45 for 1895; $1.45 for 1896. The tax rate for 1897 has not yet been fixed, but will be about the same.

So that the complainant says that the amount of taxes which it would have to pay under the board of valuation and assessment law, over and above what it would have to pay under the Hewitt law, would be more than $20,000 per annum.

XI.

Complainant says that this scheme of taxation violates the contract made between it and the State in its charter and the amendments thereto, and violates the contract made between it and the State under the Hewitt law, and is very largely in excess of the taxation provided for by its charter or by said Hewitt law; and the act of the legislature of Kentucky instituting such a method of taxation is violative of the Constitution of the United States, and particularly of the clause thereof prohibiting any State from passing a law which shall impair the obligation of a contract; and is void.

XII.

The said method of taxation is also violative of the constitution of the State of Kentucky, in this, that by the said constitution of the State of Kentucky it is expressly provided that the General Assembly shall not impose taxes for the purposes of any county, city, town, or other municipal corporation, but may, by general laws, confer on the proper authorities thereof respectively the power to assess and collect such taxes; in this, that the said law provided for an assessment of the capital stock of corporations, among others banks, by a State board of valuation and assessment, and provides for the certification of such value by the State board to counties and municipalities where any of such capital stock is situated or franchises employed; giving to said State board the right to apportion the same among the taxing districts, and providing that the corporations shall pay to such taxing districts local taxes thereon.

XIII.

The said law having been thus passed in 1892, the State board of valuation and assessment valued the capital stock of the complainant, and deducting therefrom the assessed value of its real estate (which is small in proportion) certified to the authorities of the defendant, The County of Franklin and The Board of Councilmen of The City of Frankfort, the proportion of such value found to be taxable by the county of Franklin and the city of Frankfort for the year 1893. The county of Franklin caused to be placed in the hands of R. D. Armstrong, the sheriff of said county and the collector of its revenue, the tax bill made out accordingly; and the board of councilmen of the city of Frankfort caused a tax bill to be made out upon such valuation for the collection of city taxes thereon.

10

XIV.

On the 28th day of February, 1894, the complainant filed in the circuit court of Franklin county, that being a court of general jurisdiction, its petition against the county court of Franklin, and R. D. Armstrong, sheriff of said county, setting forth in said petion, in apt terms, the contract between it and the State in regard to taxation under its original charters and under the Hewitt law, and claiming the benefit of such contract, and claiming that no taxes could be collected from the complainant except in pursuance thereof, during its charter life; and claiming that the act of the legislature of November 11, 1892, was unconstitutional and void as impairing the obligation of these contracts, and praying the court to establish these contracts and to enjoin the said Franklin county and R. D. Armstrong, sheriff, from attempting to collect any taxes contrary thereto.

Issue having been joined upon the complainant's said suit, a judgment was rendered in the Franklin circuit court, to the effect that the act of November 11, 1892, did not violate any contract between the complainant and the State; and judgment was entered accordingly.

Thereupon this complainant appealed from said judgment to the court of appeals of Kentucky. In that court, its appeal having come on to be heard, the court adjudged that the judgment of the lower court was erroneous; and remanded the case to the Franklin circuit court for judgment in conformity to its opinion.

Thereupon the said Franklin circuit court, on January 21, 1896, entered the following judgment, which has ever since and does now remain in full force and effect:

"This day came the parties by their attorneys, and this cause having been heretofore submitted for a judgment conforming to the opinion and mandate of the court of appeals heretofore filed, reversing the former judgment of this court, and the court being now sufficiently advised, it is adjudged that article 2 of the act of the General Assembly, entitled 'An act to amend the revenue laws of the Commonwealth of Kentucky,' approved May 17, 1886 (General Statutes, chapter 92, article 2), and the acceptance of the provision thereof by the plaintiff, constituted a contract between the plaintiff and the Commonwealth which the latter cannot alter or change without the consent of the former; by the terms of which contract the plaintiff cannot, during the continuance of its charter, be assessed for taxation or taxed for State purposes in a different mode or at a greater rate of taxation than as prescribed in the said act, and can be assessed for taxation and taxed for county and municipal purposes only upon its real estate used by it in conducting its business; that the provisions of the present constitution of this State and the act of November 11, 1892 (article 3, chapter 103, Acts 1891-'2-'3), in so far as they were intended to provide for any assessment or taxation of the plaintiff's property, rights of property or franchise, except to assess and tax for county and municipal purposes its real estate used in conducting its business, are in violation of and repugnant to the Federal constitution and void; that the board of valuation and
11 assessment provided for in said act of November 11, 1892, had and has no authority in law to assess or value the plaintiff's franchise for taxation, or the auditor to apportion or certify the same or any part of the same for county or municipal taxation; that the temporary injunction which was granted in this cause at the commencement of the action be and the same is now made perpetual, and the defendants, Franklin County and R. D. Armstrong, sheriff

of said county, be and each of them are perpetually enjoined and restrained from levying upon or selling any property of the plaintiff, or in any manner collecting from the plaintiff any taxes for the purposes of Franklin county upon the franchise or property of the plaintiff, except taxes upon its real estate used in conducting its business. And it is further adjudged that the plaintiff recover of the defendant its costs in this action expended."

A duly certified copy of the record in said cause, as it appears in the court of appeals, is filed herewith as part thereof, marked "Exhibit B," and the complainant states that the said exhibit contains the whole proceedings in said cause except the decree made by the Franklin circuit court on January 21, 1896, the terms of which have been given above, and a duly certified copy whereof is filed herewith as part hereof, marked "Exhibit C."

XV.

The complainant further states that the said board of valuation and assessment, acting under the said law of November 11, 1892, having certified to the city of Frankfort, as set forth in a preceding paragraph, the amount of its proportion of the valuation of complainant's franchise, and the board of councilmen of the city of Frankfort attempting to collect municipal taxes thereon, the complainant, on the 2d day of October, 1894, filed in the Franklin circuit court, which is a court of general equity jurisdiction, its petition against the said board of council- of the city of Frankfort, setting forth its contract under its original charter and under the Hewitt law with the State, and relying upon the same, and setting forth the attempted violation thereof under the act of November 11, 1892, and praying judgment against the defendants, The Board of Councilmen of the City of Frankfort, etc., that the said contracts between the complainant and the State be adjudged of full force and effect, and the said act of November 11, 1892, declared unconstitutional and void, and the complainant's right to the establishment and enforcement of its contract during its charter life be established, decreed, and enforced.

Issue having been joined, the cause came on to be heard and resulted in a judgment of the Franklin circuit court that the said act of November 11, 1892, did not violate any contract between the complainant and the State, and adjudging that the complainant was not entitled to relief against the said tax.

And thereupon the complainant applied to the court of appeals of the State of Kentucky. The cause there came on to be heard and was argued by counsel for the board of councilmen of the city of Frankfort and also by the attorney general of the State, insisting that the said contract did not exist and had not been 12 violated. And thereupon the cause having come on for decision, the court of appeals rendered its opinion therein and issued a mandate directing that the judgment of the lower court should be reversed and a new judgment entered in conformity with the opinion transmitted.

And thereupon, the cause having been transmitted to the Franklin circuit court, came on for judgment on January 21, 1896; whereupon the following judgment was entered, being in words and figures as follows:

"This day came the parties by their attorneys, and this cause having been heretofore submitted for a judgment conforming to the opinion and mandate of the court of appeals heretofore filed reversing the former judgment of this court, and the court being now sufficiently advised, it is adjudged that article 2 of the act of the General Assembly, entitled 'An act to amend the revenue laws of the Commonwealth of Kentucky,' approved May 17, 1886 (General Statutes, chapter 92, article 2), and the acceptance of the provision thereof by the plaintiff, constituted a contract between the plaintiff and the Commonwealth which the latter cannot alter or change without the consent of the former; by the terms of which contract the plaintiff cannot, during the continuance of its charter, be assessed for taxation or taxed for State purposes or in a different mode or at a greater rate of taxation than as provided for in said act, and can be assessed for taxation and taxed for county and municipal purposes only upon its real estate used by it in conducting its business; that the provisions of the present constitution of this State and of the act of November 11, 1892 (article 3, chapter 108, Acts 1891-'2-'3), in so far as they were intended to provide for any assessment or taxation of the plaintiff's property, rights of property or franchise, except to assess and tax for county and municipal purposes its real estate used in conducting its business, are in violation of and repugnant to the Federal Constitution and void; that the board of valuation and assessment provided for in said act of November 11, 1892, had and has no authority in law to assess or value the plaintiff's franchise for taxation, or the auditor to apportion or certify the same or any part of the same for county or municipal taxation; that the temporary injunction which was granted in this cause at the commencement of the action be and the same is now hereby made perpetual, and the defendants be and each of them are perpetually enjoined and restrained from levying upon or selling any property of the plaintiff for the purpose of collecting any taxes for the city of Frankfort upon the franchise or property of the plaintiff, except taxes upon its real estate used in conducting its business. And it is further adjudged that the plaintiff recover of the defendants its costs in this action expended."

The complainant files herewith, as a part hereof, a duly certified copy of the proceedings in this cause, being the full record of the court of appeals, which contains the entire record of the cause except the decree of judgment entered upon the return of the cause, a copy of which is filed herewith as part hereof, marked "Exhibit D."

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XVI.

The complainant further states that the defendant, The City of Louisville, claiming to act under authority given it by the legislature of Kentucky under an act providing for government of cities of the first class (of which the city of Louisville is the only one), passed an ordinance which was approved February, 1894, requiring the banks located in the city of Louisville to pay to said city an annual tax of 4 per cent. upon their gross earnings. The gross earnings of complainant are about $200,000 annually, so that the said tax would have been $8,000. The complainant failed to pay said tax, and thereupon, under the provision of law, a warrant was sued out against the complainant in the city court of Louisville. The complainant thereupon, in the manner provided by law, filed its petition in the Jefferson circuit court for a writ of prohibition against R. H. Thompson, judge of the police court of the city of Louisville, setting out in apt terms its incorporation, its original charter, the extensions thereof, the circumstances of the Hewitt law, the contract entered into in conformity therewith, and claiming the benefit of its said contractual relations with the State; alleged that the said ordinance of the city of Louisville was void as impairing the obligations of the complainant's contract, and any authority given to the city of Louisville to pass such ordinance was likewise void as impairing the obligation of a contract; and asking that the said judge be prohibited from taking jurisdiction under the complaint against the plaintiff for the violation of the said ordinance. Issue was joined on this petition, the defendant being in name The Judge of the Police Court of the City of Louisville, but being in reality The City of Louisville, and the City of Louisville appearing by counsel, the court found the issues in favor of this complainant, and entered a judgment accordingly, establishing the contract of the complainant and its terms and duration.

And thereupon the defendant, The City of Louisville, caused an appeal to be taken from said judgment to the court of appeals of Kentucky, where the cause coming on to be heard, was argued by counsel for the City of Louisville, and for the Commonwealth of Kentucky, both of whom urged that the said contract was not enforceable and had ceased to exist. But the court of appeals, having duly considered the controversy, confirmed the said judgment, and sent its mandate of affirmance to the court of original jurisdiction, where it was duly entered. A duly certified copy of the proceedings in the said cause is filed herewith as part hereof, marked "Exhibit E."

XVII.

The premises considered, the complainant says that it has been fully and finally adjudicated in proceedings between it and the defendants, The City of Louisville, County of Franklin, and The Board of Councilmen of the City of Frankfort, that complainant's contract is valid and enforceable, and that the complainant can be subjected to no greater rate of taxation than that agreed to by it under the Hewitt law, or, if the Commonwealth of Kentucky shall be adjudged to have retired from said contract, then to no greater rate of taxation than is provided for under the complainant's charter and amendments.

14

XVIII.

The complainant has always been ready to pay and has paid all of the taxes due by it under the provisions of the Hewitt act, but if it should be determined that the State of Kentucky has the right to retire from that contract, then the complainant submits that it is entitled to be restored to its former position, and it will then be ready and willing to pay all taxes that may be exacted from it according to the terms of its charter and amendments.

XIX.

The complainant says that the defendants, Samuel H. Stone, Charles Finley, and George W. Long, are threatening and unless restrained by this honorable court will proceed to value the franchise of the complainant in the manner set forth under the act of November 11, 1892, for the years 1895, 1896, and 1897, and certify such value to the county clerk of Jefferson county, to be by him certified to the collecting officer of the city of Louisville and to the county clerk of Franklin county, to be by him certified to the collecting officer of the board of councilmen of the city of Frankfort and the collecting officer of the county of Franklin; that such assessments will be illegal; in violation of the complainant's contract, as has been heretofore, in causes between the complainant and the said several defendants, adjudged, and will be unlawful and violative of complainant's contract, and will cast a cloud over complainant's franchise; cause a multiplicity of suits to be brought against complainant, and damage it in a way that cannot be repaired or estimated at the common law; and from these threatened wrongs the complainant has no remedy at the common law, but its only remedy is by a bill in equity; and unless restrained by this honorable court the defendants, The City of Louisville, The County of Franklin, and The Board of Councilmen of the City of Frankfort, will attempt to levy and collect taxes based upon the apportionment of the valuation found by said board of valuation and assessment, and will subject the complainant to the harassment of many suits, and cast a cloud upon its franchises and property, and an effort will be made to enforce penalties against this complainant, as hereinbefore set out.

XX.

The premises considered, complainant prays that the said Samuel H. Stone, Charles Finley, and George W. Long be perpetually enjoined and restrained from assessing the value of complainant's capital stock under the said act of November 11, 1892, for the years 1895, 1896, or 1897, or any other year, and that the said defendant, Samuel H. Stone, be enjoined from certifying any such valuation to the said several municipalities, and that the said several municipalities, the city of Louisville, county of Franklin, and board of councilmen of the city of Frankfort, be enjoined and restrained
15 from endeavoring to collect any tax upon any such valuations; that the complainant's contract be fully established; that it be declared that upon conforming to its said contract as

hereinbefore set up, by making the payments under the Hewitt law or under its charter, no other or further taxes shall be exacted from it under any form or by any authority.

May it please your honors to grant unto your complainant a writ of subpœna, under proper authority, to be issued against the said Samuel H. Stone, Charles Finley, Geo. W. Long, the city of Louisville, county of Franklin, board of councilmen of the city of Frankfort, commanding each of them, under suitable penalty to be therein fixed, and upon a day therein named, to appear and answer to this bill of complaint, but not under oath, answer under oath being waived, and to stand to and abide by all orders and decrees that the court may enter in the premises; and your orator will ever pray for this and all other appropriate relief.

HUMPHREY & DAVIE,
For Complainant.

STATE OF KENTUCKY,
Jefferson County, } *sct:*

Oscar Fenley says that he is the vice-president of the complainant; that the facts stated herein, so far as stated from his personal knowledge, are true, and so far as stated from information, he believes to be true.

OSCAR FENLEY.

Subscribed and sworn to before me this 19th day of April, 1897.

THOS. SPEED, *Clerk,*
By HENRY F. CASSIN, *D. C.*

16 The following is

EXHIBIT 1.

COMMONWEALTH OF KENTUCKY:

Pleas before the honorable court of appeals of Kentucky, at the capitol, in the city of Frankfort, on the 5th day of June, 1884, Chief Justice Pryor and Judges Lewis, Holt, and Bennett.

THE FRANKLIN COUNTY COURT and J. W. GAINES, Sheriff of Franklin County, Appellants,
versus
THE PRESIDENT, DIRECTORS, AND COMPANY OF THE Bank of Kentucky, Appellees.
} Appeal from Franklin.

Be it remembered that heretofore to wit: on the 16th day of July, A. D. 1884, the appellant by counsel filed in the clerk's office of the Kentucky court of appeals a transcript of record in words and figures following, to wit:

STATE OF KENTUCKY:

Proceedings before the Honorable C. S. French, judge of the court of common pleas for Franklin county, at the court-house, in the city of Frankfort, on the 17th day of May, 1884.

Be it remembered that on the 6th day of September, 1883, the fol-ing petition was filed in the clerk's office of the court aforesaid:

Franklin Common Pleas Court.

THE PRESIDENT, DIRECTORS, AND COMPANY OF THE BANK OF KENTUCKY, Plaintiff,
versus
JOHN W. GAINES, Sheriff of Franklin County, and FRANKLIN County, Defendants.

The plaintiff, "The President, Directors, and Company of the Bank of Kentucky," states that by an act of the General Assembly of the Commonwealth of Kentucky, approved February 22. 1834, entitled An act to establish the Bank of Kentucky, it was incorporated, made, and is now a body politic and corporate, under the name and style of the President, Directors, and Company of the Bank of Kentucky, with all the privileges, franchises, and powers conferred upon it by said act and amendments thereto, and with its principal bank, place of business, and offices in the city of Louisville, county of Jefferson, and State of Kentucky. And by an act of the same body, approved February 15, 1858, entitled "An act to extend the charters of the Bank of Louisville, Bank of Kentucky, and Northern bank," its charter as amended and its charter privi-
leges, rights, and duties were extended and continued in force
17 for the period of twenty years from the first (1st) day of Octo-
ber, 1864. And in said act are plainly expressed all of the rights, powers, and reservations retained by the said legislature; and the intent that the said charter should not be subject to amendment or repeal at the will of the legislature except to prohibit the issue of bank notes under the denomination of $5, and after 1875 of notes under the denomination of $10, and its having at any time in circulation a greater amount than the actual capital paid in, is therein plainly expressed. Said acts and all amendments thereto are referred to as parts hereof.

It says that soon after the adoption of said original act of incorporation, and in conformity with its terms and provisions, which were extended as aforesaid by the said act of 1858, it organized and established said bank, and as required established and has maintained a branch thereof at the seat of government, Frankfort, Ky., as the fiscal agent of and to aid in the management of the fiscal affairs of the State, which branch is known as and called the Branch Bank of Kentucky at Frankfort, Ky., and is managed by a board of directors and other officers appointed by plaintiff, under the direction and advice of its principal officers at Louisville, Ky., and which has been the fiscal agent of the State, and done and performed all and every service required of it as such. That all the property of

every description belonging or appertaining to its said Branch bank, at Frankfort, Ky., is the property of and belongs to this plaintiff. That for and during the years 1876, 1877, 1878, 1879, 1880, 1881, 1882, and 1883 the amount of its capital stock assigned to, and which was capital stock of its said Branch bank, and all that was used by it in Franklin county, was and is $200,000, of which $10,000 was and is invested in real estate for a banking-house and the necessary office furniture for its business, and is of the value of $10,000, which real estate consists of a lot of ground on St. Clair street, in Frankfort, Ky., where its said Branch bank is now situated, and upon which it has erected a building containing the proper rooms or offices for conducting the business of its said Branch bank, and a residence for its cashier, the same being so arranged that the residence of its cashier and sleeping apartments for its clerks surround its banking-rooms and vault as well as may be, for the proper security, at night as well as day, to the money and property of said bank, and the State and other depositors therein, and being no more than sufficient for its business and for the purpose of furnishing such proper and adequate security, and said lot and building have been and are being used for no other purposes; and of which capital stock the sum of $100,000 was, for the years 1876 to 1879, inclusive, invested in United States Government bonds, held by its said Branch bank to meet the requirements of the State and other emergencies of its business, and which bonds were by law exempt from taxation for any purpose whatever. That it did not, in the years 1876 to 1883, inclusive, have or own, situated in Franklin county, any other real estate or tangible property assessable for taxation for any purpose in kind or specie, either in its own right or as agent for any one else. That all of its property, or all property owned or possessed by it in Franklin county in the years aforesaid (including said capital stock), consisted and
18 consists of the real estate and furniture aforesaid, required in the conduct of the business of its said Branch bank, of the United States Government bonds aforesaid, and of notes, bills, accounts, choses in action, and evidences of debt, and that the aggregate of the same has been during said years and is fully covered by its indebtedness to its stockholders, depositors, and other creditors, and that it has not held or owned or possessed in said years any balance whatever under the provisions of section 5, art. 1, chapter 92 of the General Statutes.

It further says that under and by virtue of its charter, extended and continued as aforesaid and by law and as part of the rights and privileges given and requirements demanded of it thereby and in consideration of its organization thereunder and of the establishment and management of its said principal bank and the said branch bank therein required, it was authorized and bound, by the cashier of its principal bank on the first day of July of each and every year during the continuance of its charter to pay to the treasurer of this Commonwealth fifty cents on each one hundred dollars of stock held and paid for in said bank, "which shall be in full of all tax or bonus." Plaintiff avers that it has pursuant to the terms and requirements of said acts, on the first day of July in each year, including the years 1876, 1877, 1878, 1879, 1880, 1881, 1882, and 1883, during the time it was so required by its charter, by the cashier of its principal bank, paid to the treasurer of this Commonwealth fifty cents on each one hundred dollars of stock held and paid for in said bank, which payments it avers were and are in full of all tax or bonus against it.

But plaintiff says that notwithstanding all the facts hereinbefore set out and stated, the defendant Franklin County, without authority of law, had made by the Franklin county court, or at least there was made by said court on the — day of ——, 1883, warrant or authority of law, an order directing the clerk of that court to issue a summons against The Bank of Kentucky, meaning this plaintiff, returnable on the first Monday in May, 1883, commanding it to appear in that court and list or show cause why it should not list its property in Franklin county for taxation for county purposes as required by law.

And thereafter, to wit, on the 16th day of April, 1883, the clerk of said court, notwithstanding no year or years was mentioned or stated in said order for which said bank should list or show cause for not listing its property, and no report whatever had been made to said clerk or said court of any delinquency of plaintiff or its said bank in listing its property for taxation for any year or years, issued and delivered to the sheriff of Franklin county a summons directing said sheriff to summons plaintiff to appear before the Franklin county court on Monday, May 7th, 1883, and list (or show cause why it should not list) all of its property situated in Franklin county for assessment and taxation for county purposes for the years 1876, 1877, 1878, 1879, 1880, 1881, 1882, and 1883. This plaintiff appeared in said court in obedience to said summons and filed its demurrer in writing to the jurisdiction of said court and the same was overruled, and it thereupon filed its response and plea in which it denied that said county court had power or juaisdiction to assess or list, or to direct or order any one else to assess or list, its
19 or any of its property for purposes of county taxation or for any other purposes, and in which it set out in full and in detail all the facts hereinbefore set out and pleaded the same and the said payments of fifty cents on each one hundred dollars of stock held and paid for in its said bank to the treasurer of this Commonwealth in full of and as a protection against all other taxation as provided in the acts aforesaid.

But said court held said response and answer to be insufficient, and without hearing any evidence whatever, made and entered the following order in said proceeding, to wit:

Franklin County Court.

MONDAY, *May* 7, 1883.

COMMONWEALTH, for FRANKLIN COUNTY Court, *versus* THE PRESIDENT, DIRECTORS, AND COMPANY of the Bank of Kentucky.	Rule to List Property for Taxation.

The defendant filed a demurrer in writing to the summons and proceedings herein which is now overruled, to which the bank excepts, and the defendants then filed a response in writing, the verification of which was waived by the attorney for the county, and the county attorney then demurred to said response, and the demurrer filed by the attorney for the county to the response of the bank is sustained, to which the defendant also excepts; and it being admitted by the bank through its attorney that due demand had been made by the assessor of Franklin county of the president of defendant's Branch bank at Frankfort, Ky., to list the property of defendant's bank, situated in Franklin county, for taxation for county purposes for four years last past, and that he failed and refused to list any part of same with the assessor. There was no evidence heard, but the case was submitted upon the said admission, the facts stated in the response of defendant, and the sheriff's report of delinquents for said years. The clerk of this court is hereby ordered to assess and list for taxation for county purposes the property of said bank, situate in Franklin county, for the years aforesaid, viz: for the years 1876, 1877, 1878, and 1879, property of the value of one hundred thousand dollars ($100,000), to be taxed at the rate of the *ad valorem* county levy tax for each of said years respectively, and for the years 1880, 1881, 1882, and 1883, property of the value of two hundred thousand dollars ($200,000), to be taxed at the rate of the *ad valorem* county levy tax for each of said years respectively, and the clerk will certify the whole of said assessments to the sheriff of Franklin county for collection of the county taxes as above indicated. To all of which the defendant excepts.

The clerk of said county court on the 23d day of May, 1883, without any authority of law, assessed as against this plaintiff property for taxation for county purposes, professing to make said assessment pursuant to judgment of the Franklin county court theretofore rendered, as follows:

20 Value property, 1876, $100,000, 20 cents on $100, tax	$200 00
Value property, 1877, $100,000, 20 cents on $100, tax..	200 00
Value property, 1878, $100,000, 20 cents on $100, tax..	200 00
Value property, 1879, $100,000, 25 cents on $100, tax..	250 00
Value property, 1880, $200,000, 40 cents on $100, tax..	800 00
Value property, 1881, $200,000, 40 cents on $100, tax..	800 00
Value property, 1882, $200,000, 40 cents on $100, tax..	800 00
Value property, 1883, $200,000, 40 cents on $100, tax..	800 00
	$4,050 00

and has certified to the defendant J. W. Gaines, sheriff of Franklin county, said so-called list or assessment, amounting in all to $4,050, for collection, and said Gaines, sheriff as aforesaid, has levied the property of this plaintiff to make said illegal taxes, and, unless prevented, will sell the same to satisfy said alleged taxes. Certified copies of said order, summons, response, judgment, and tax-list, and of the entire record of said proceedings in said county court, together with the certificate of the clerk of said court to the effect that no report had been made by the sheriff of Franklin county, or any one else, reporting plaintiff as a delinquent tax-payer to Franklin county for the years 1876, 1877, 1878, 1879, 1880, 1882, 1883, or for either of said years, are filed herewith as part hereof.

Plaintiff here avers that none of its aforesaid property is subject or liable to taxation for county purposes in Franklin county for said years, or either of them; that said county court had no jurisdiction whatever to make any assessment or list of plaintiff's property for taxation for county purposes or to direct or order any one else to assess or list it; nor had said clerk any right or authority so to do.

Plaintiff avers that the aforesaid pretended assessment was made up and consists of the capital stock of the plaintiff assigned to its Branch bank at Frankfort, Ky., and no other or different property whatever, deducting from said stock for the years 1876 to 1879, inclusive, the amount thereof invested as aforesaid in Government bonds, and is an attempt to tax its said capital stock in violation of the provisions of its said charter and its contract with the Commonwealth, which declares that the payment to the treasurer of the State of fifty cents on each one hundred dollars of stock held and paid for in its bank shall be in full of all tax or bonus.

And it further alleges that said county court had no right or authority to assess, levy, or collect an *ad valorem* tax on any property of plaintiff at the rate of twenty cents on the one hundred dollars' worth for either of the years 1876, 1877, and 1878, or at the rate of twenty-five cents on the one hundred dollars' worth for the year 1879, or at the rate of forty cents on the one hundred dollars' worth for either of the years 1880, 1881, and 1882, or at the rate of forty-five cents on the one hundred dollars' worth for the year 1883, for county purposes.

Plaintiff says it has no remedy at law for its protection against the wrongs and injuries hereinbefore complained of and set out; that it would sustain great and irreparable injury from a sale of its property levied on by said sheriff as aforesaid; that no previous injunction has been granted, refused, or applied for.

21 Wherefore it prays that the defendant, John W. Gaines, sheriff as aforesaid, be enjoined and restrained from enforcing the levy made by him as aforesaid on plaintiff's property, and from subjecting any property of plaintiffs to sale under said illegal and alleged tax-list or to satisfy any taxes alleged or claimed to be due Franklin county on any of plaintiff's property; and that the defendant Franklin County be enjoined and restrained from assess-

ing or collecting or attempting to assess or collect hereafter any tax whatever on plaintiff's property for county purposes or any other.

D. W. LINDSEY,
Attorney for Plaintiff.

A. W. Dudley says he is the president of the Branch Bank of Kentucky at Frankfort, Ky., and the chief officer or agent of plaintiff now in this county, and that he believes the statements of the foregoing petition are true.

A. W. DUDLEY.

Subscribed and sworn to before me, by A. W. Dudley, this 1st day of September, 1883.

JOHN B. LINDSEY,
Notary Public, Franklin Co., Ky.

COMMONWEALTH, for FRANKLIN COUNTY,
versus } Injunction.
BRANCH BANK OF KENTUCKY AT FRANKFORT.

It is ordered that the summons issued against the Branch Bank of Kentucky at Frankfort be quashed, and it is further ordered that the clerk of this court do issue a summons against the Bank of Kentucky returnable on the first Monday in May next, commanding it to appear in this court and list or show cause why it shall not list its property in Franklin county for taxation for county purposes as required by law.

Commonwealth of Kentucky to the sheriff of Franklin county:

You are commanded to summons the Bank of Kentucky and its Branch Bank of Kentucky at Frankfort, doing business under the corporate name and style of the President, Directors, and Company of the Bank of Kentucky, to appear before the Franklin county court on Monday, May 7, 1883, and list (or show cause why it shall not list) all the property of said bank or of its branch of Frankfort, situate in Franklin county, for assessment and taxation — county purposes for the years 1876, 1877, 1878, 1879, 1880, 1882, and 1883, as required by the laws of this State, and warn it that upon failure to answer or list said property the same will be listed and twenty-five per cent. added to the value thereof as a penalty for such failure and refusal, and its chief officer or agent will be proceeded against for contempt.

Witness our hand this April 10, 1883.

JAS. G. CROCKETT,
Clerk Franklin Co. Court.

22 The following return was endorsed on the foregoing summons:

Executed on the Bank of Kentucky by delivering to Barret, the

president, a copy of the within notice, and on the Branch bank by delivering to A. Dudley, the president, a copy of the within notice.
April 13, 1883.

J. W. GAINES, *S. F. C.*,
By W. HUGHES, *D. S.*

For demurrer of Bank of Kentucky to summon-, see page 7.

Franklin County Court.

In the Matter of a Summons against THE PRESIDENT, DIRECTORS, AND COMPANY OF THE BANK OF KENTUCKY to Assess Its Property Situated in Franklin County for County Taxations.

Response.

The President, Directors, and Company of the Bank of Kentucky, for response to the summons issued against it herein, says:

1st. It denies that this court has any jurisdiction or power to assess or list or to direct or order any one else to assess or list any of its property situated in this county or elsewhere for county taxation or for any other purpose.

2d. That by the acts of the General Assembly of the Commonwealth of Kentucky, entitled "An act to establish the Bank of Kentucky," approved February 22, 1834, and "An act to extend the charter of the Bank of Louisville, Bank of Kentucky, and Northern bank," approved February 15, 1858, and the amendments to said acts which are referred to as parts thereof, it was established and now is a corporation under the corporate name and style of "The President, Directors, and Company of the Bank of Kentucky," with all the franchises, privileges, and powers conferred upon it by said acts, and with its principal place of business and officers in the city of Louisville, county of Jefferson, and State of Kentucky: That by the terms of its said charter it was required to establish and maintain a branch of its bank at Frankfort, Kentucky, as the fiscal agent of the Commonwealth, and it did establish and has maintained said Branch bank at Frankfort, Ky., which is managed by a board of directors and other officers appointed by it under the direction and advice of its principal officers at Louisville, Ky., and which has been the fiscal agent of the Commonwealth and done and performed all and every service required of it as such: That all the property of every description, belonging or appertaining to its said Branch bank at Frankfort, Ky., is the property — and belongs to this respondent: That for and during the years mentioned in said summons, viz: the years 1876, 1877, 1878, 1879, 1880, 1881, 1882, and 1883, the amount of its capital stock assigned to and which was the capital stock of its said Branch bank and all that was used by it in Franklin county was and is $200,000, of which $10,000 was and is invested in real estate for a banking-house, which real estate consists of a lot of ground on St. Clair street in the city of Frankfort, Ky., where its said Branch bank is now situated, and
23 upon which it has erected a building containing the proper rooms or offices for conducting the business of said Branch

bank and a residence for its cashier, the same being so arranged that the residence of the cashier and sleeping *departments* for one or more of its clerks surround its banking-rooms and vault for the proper security at night as well as day to the money and property of said bank and the State and other depositors therein and being no more than sufficient for its business and for the purpose of furnishing such proper and adequate security, and said lot and building are and have been used for no other purpose, and of which the sum of $100,000 was, for the years 1876 to 1879 inclusive, invested in United States Government bonds held by said bank, and which were not by law taxable for any purpose whatever. That it had nor has no other real estate or taxable property assessable for any purpose in kind or species in its own right or as agent for any one else situated in Franklin county. That all of its property in Franklin county, including said capital stock, except a small amount of office worth not exceeding $—, consists and consisted of the bonds aforesaid, notes, bills, accounts, choses in action, and evidences of debt, and that the aggregate of the same is and has been fully covered by its indebtedness to its stockholders, depositors, and other creditors, and that it has not held or owned and does not now hold or own any balance whatever under the provisions of sec. 5, art. 1, chapter 92 of the General Statutes.

3d. It further says that by the terms of its said charter and by law it is provided, and it was contracted between the Commonwealth of Kentucky and it, that (it) should on the first day of July each and every year during the continuance of its charter, by the cashier of its principal bank, pay to the treasurer of the Commonwealth fifty cents on each one hundred dollars of stock held and paid for in said bank in full of all tax or bonus; and it says it has each year and including each of the years named in said summons, reported and by the cashier of its principal bank paid to the treasurer of this Commonwealth fifty cents on each one hundred dollars of stock held and paid for in said bank, and such exemption contract or payment (is) also a bar to the proceeding. It denies that it is or has been delinquent or has failed to give in any property owned or held by it assessable for county taxation for any of said years. And having responded, it asks that this proceeding be dismissed.

D. W. LINDSEY,
Attorney for the President, Directors, and
Co. of the Bank of Kentucky.

Franklin County Court.

In the Matter of a Summons against "THE PRESIDENT, DIRECTORS, AND COMPANY OF THE BANK OF KENTUCKY" to Assess its Property Situated in Franklin County for County Taxation.

Demurrer.

The President, Directors, and Company of the Bank of Kentucky demurs to the summons and the proceedings herein; because it says that this court has no jurisdiction of the subject-matter thereof.

D. W. LINDSEY,
Attorney for P., D., and Co. of Bank of Kentucky.

Franklin County Court.

Bank Kentucky case.

The County of Franklin, by attorney, demurs to the response filed by the bank herein because the same does not state facts sufficient to relieve it from payment of county taxes.

IRA JULIAN, *Att'y.*

Franklin County Court.

MONDAY, *May* 7, 1883.

COMMONWEALTH, for FRANKLIN COUNTY Court, *versus* THE PRESIDENT, DIRECTORS, and COMPANY of the Bank of Kentucky.	Rule to List Property for Taxation.

The defendant filed a demurrer in writing to the summons and proceedings herein which is now overruled, to which the bank excepts, and the defendant then filed a response in writing, the verification of which was waived by the attorney for the county, and the county attorney then demurred to said response, and the demurrer filed by the attorney for the county to the response of the bank is sustained, to which defendant also excepts, and it being admitted by the bank, through its attorney, that due demand had been made by the assessor of Franklin county of the president of defendant's Branch bank at Frankfort, Ky., to list the property of defendant's bank, situate in Franklin county, for taxation for county purposes for four years last past, and that he failed and refused to list any part of same with the assessor. There was no evidence heard, but the case was submitted upon the said admission, the facts stated in the response of defendant, and the sheriff's reports of delinquents for said years.

The clerk of this court is hereby ordered to assess and list for taxation for county purposes the property of said bank situate in Franklin county for the years aforesaid, viz: for the years 1876, 1877, 1878, and 1879, property of the value of one hundred thousand dollars ($100,000), to be taxed at the rate of the *ad valorem* county levy tax for each of said years respectively, and for the years 1880, 1881, 1882, and 1883 property of the value of two hundred thousand dollars ($200,000), to be taxed at the rate of the *ad valorem* county levy tax for each of said years respectively, and the clerk will certify the whole of said assessments to the sheriff of Franklin county for collection of the county taxes as above indicated. To all of which the defendant excepts.

The sheriff of Franklin county nor any one else has reported the Bank of Kentucky as a delinquent tax-payer to Franklin county for the years 1876, 1877, 1878, 1879, 1880, 1881, 1882, 1883, nor for either of said years.

25 STATE OF KENTUCKY, County of Franklin, } sct:

I, Jas. G. Crockett, clerk of the county court for the county and State aforesaid, certify the foregoing to be a true copy of the proceedings of The Franklin County Court against The Bank of Kentucky as of record and on file in my said office.

Given under my hand this the 13th day of July, 1883.

JAMES G. CROCKETT, *Clerk*,
By W. D. GRAVES, *D. C.*

Property Listed with Clerk of County Court.

Bank of Kentucky property assessed under judgment of county court for taxation for county purposes for the year 1876, $100,000; 1877, $100,000; 1878, $100,000; 1879, $100,000; 1880, $200,000; 1881, $200,000; 1882, $200,000.

STATE OF KENTUCKY, County of Franklin, } sct:

I, Jas. G. Crockett, clerk of the county court of the county aforesaid, certify the foregoing to be a true and correct copy of the assessment of the property of the Bank of Kentucky as made by me under a judgment of said court directing that said assessment be made against said Bank of Kentucky for the years 1876, 1877, 1878, 1879, 1880, 1881, and 1882 for county purposes, as of record in my office.

Given under my hand this the 5th day of September, 1883.

JAS. G. CROCKETT, *Clerk*,
By W. D. GRAVES, *D. C.*

Franklin Common Pleas Court.

THE PRESIDENT, DIRECTORS, AND COMPANY OF THE BANK of Kentucky, Plaintiff,
versus
JOHN W. GAINES, Sheriff of Franklin County, and Franklin County, Defendants.
} Order.

This day came the parties to the above-styled action, by their attorneys, and the plaintiff, applying for an injunction, and the defendants appearing by Ira Julian, their attorney, and waiving notice of the time and place of said application, and it appearing that the judge of this court, and also the judge of the Franklin circuit court, are absent from Franklin county, an injunction is granted and will be issued by the clerk of this court, agreeable to the prayers of the petition upon the plaintiff's executing before the clerk of this court bond with good security to the effect that the plaintiff will pay to the defendants such damages as they may sustain, not exceeding $9,000.00, if it be finally decided that the injunction ought not to have been granted.

September 6, 1883.

W. FRANKLIN, *C. F. C. C.*

THE PRESIDENT, DIRECTORS, AND COMPANY OF the Bank of Kentucky *versus* JOHN W. GAINES. } Injunction Bond.

We undertake that the plaintiff, The President, Directors, and Company, shall pay to the defendants, John W. Gaines, sheriff of Franklin county, the damages not exceeding nine thousand dollars, which they or either of them may sustain, if it be finally decided that the injunction ought not to have been granted.

Witness my hand this 6th day of September, 1883.

E. L. SAMUEL.

The Commonwealth of Kentucky to the sheriff of Franklin county, Greeting:

You are commanded to summon John W. Gaines, sheriff of Franklin county, and Franklin County to answer, on the first day of the next November term, a petition in equity filed against them in Franklin common pleas court, by President, Directors, and Company of the Bank of Kentucky, and warn them that upon their failure to answer, the petition will be taken for confessed, or they will be proceeded against for contempt, and you will make due return of this summons on the first day of the next November term of said court.

Witness, W. Franklin, clerk of said court, this 6th day of September, 1883.

W. FRANKLIN, *C. F. C. C.*

Executed on J. W. Gaines, sheriff of Franklin county and R. A. Thomson judge of Franklin county court, by delivering to each of them a copy of the within summons.

September 6, 1883.

W. L. COLLINS, *Sheriff.*
JOHN L. TOBIN, *D. S.*

At a court held on 1st day of December, 1883:

The defendants filed a demurrer to the plaintiff's petition and the cause was submitted on said demurrer, and the court not being sufficiently advised took time.

Franklin Circuit Court.

BANK OF KENTUCKY *versus* JOHN W. GAINES. } Demurrer.

The defendants, The Franklin County Court and John W. Gaines, sheriff, come and demur to plaintiff's petition herein because the same does not state facts sufficient to sustain the injunction herein, and does not state facts sufficient to relieve plaintiff from payment of the taxes.

27 At a court held on the 17th day of May, 1884:

The demurrer to the petition being heard, the court overruled the demurrer and defendants except, and defendants, by their attorney, declining to answer:

It is adjudged that the injunction in this cause be perpetuated, and the defendants are perpetually enjoined and restrained from further proceeding to collect the taxes mentioned in the action, and that the plaintiff recover against the defendants its costs herein expended, to all of which defendants except and pray an appeal to the court of appeals, which is granted.

KENTUCKY:

Franklin Court of Common Pleas.

I, W. Franklin, clerk of the court aforesaid, do certify that the foregoing thirty-one pages and the above lines contain a full, true, and complete transcript of the record and proceedings had in the cause therein mentioned.

Witness my hand this 11th day of June, 1884.

W. FRANKLIN, *Clerk.*

At the same time counsel for appellant- filed with the transcript the following statement:

THE FRANKLIN COUNTY COURT and J. W. GAINES, Sheriff of Franklin Co., Appellants,
versus
THE PRESIDENT, DIRECTORS, AND COMPANY OF THE Bank of Kentucky, Appellees.
} Statement.

The judgment appealed from was rendered at the May term, 1884, of Franklin common pleas court, and may be found at pages 31, 32 of this record. Appeal granted in court below. No summons.

IRA JULIAN,
Attorney for Appellants.

Afterwards at a court of appeals held in and for the Commonwealth of Kentucky, at the capitol in the city of Frankfort, on the 18th day of November, 1884, the following order was entered:

THE FRANKLIN COUNTY COURT, &c.,
versus
THE BANK OF KENTUCKY.
} Franklin.

* * * * * * *

Ordered that these causes be continued for oral argument.

Afterwards at a court of appeals held as aforesaid, on December 15, 1885:

Ordered that these causes be continued for oral argument.

28 Afterwards at a court of appeals held as aforesaid, on the 23d day of February, 1886:

These causes coming on to be heard were argued by D. W. Lindsey for appellee, and W. H. Julian for appellant, and laid over for further argument.

And on February 25, 1886:

These causes coming on to be further heard were argued by Wm. Lindsey for appellee, and John Rodman for appellant, and laid over for further argument.

And on February 27, 1886:

These causes coming on for further hearing were argued by A. Duvall for appellee, and laid over.

And on March 2, 1886:

These causes coming on to be further heard were argued by Ira Julian for appellant, and submitted.

Afterwards at a court of appeals held as aforesaid on June 5, 1888, the following judgment was entered:

THE FRANKLIN COUNTY COURT, &c., Appellants, } Appeal from
versus } Franklin
THE BANK OF KENTUCKY, Appellee. } Circuit Court.

The court being sufficiently advised, it seems to them there is no error in the judgment herein.

It is therefore considered that said judgment be affirmed, which is ordered to be certified to said court.

It is further considered that appellee recover of appellants its cost herein.

(The opinion delivered is copied in record of City of Frankfort *v.* Bank of Kentucky, and is not recopied here.)

COMMONWEALTH OF KENTUCKY:

I, Abram Addams, clerk of the Kentucky court of appeals, certify that the preceding twenty-five pages contain a true and complete transcript of the record and proceedings had in said court in case of Franklin County Court, appellant, against Bank of Kentucky, appellee, except the opinion of the court in said case (which is copied in transcript this day made of case of Board of Councilmen of City of Frankfort against Bank of Kentucky), and except the petition for rehearing and proceedings on same as appears of record and on file in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of my office. Done at Frankfort this 6th day of May, 1897.

ABRAM ADDAMS,
Clerk Ky. Court of Appeals.

29 The following is

EXHIBIT 2.

COMMONWEALTH OF KENTUCKY:

Pleas before the honorable court of appeals of Kentucky, at the capitol, in the city of Frankfort, on the 5th day of June, A. D. 1895, Chief Justice Pryor and Judges Lewis, Holt, and Bennett sitting.

THE BOARD OF COUNCILMEN OF THE CITY OF Frankfort, Appellant,
versus
THE PRESIDENT, DIRECTORS, AND COMPANY OF THE Bank of Kentucky, Appellees.
} Appeal from Franklin.

Be it remembered that heretofore, to wit: on the 9th day of August, A. D. 1884, the appellant by counsel filed in the clerk's office of the Kentucky court of appeals a transcript of record in words and figures following, to wit:

Kentucky Franklin Court of Common Pleas.

Proceedings before the Hon. C. S. French, judge of the court aforesaid, at the court-house, in the city of Frankfort, on the 16th day of May, 1884.

Be it remembered that on the 21st day of November, 1882, the following petition was filed in the clerk's office of the court aforesaid:

Franklin Common Pleas Court.

THE PRESIDENT, DIRECTORS, AND COMPANY OF THE Bank of Kentucky, Plaintiff,
versus
THE BOARD OF COUNCILMEN OF THE CITY OF FRANKFORT, T. J. Todd, Marshal, and J. E. Kirtley, Deputy Marshal of said City, Defendants.
} Petition in Equity.

The plaintiff, The "President, Directors, and Company of the Bank of Kentucky," states that by an act of the General Assembly of the Commonwealth of Kentucky, approved February 22, 1834, entitled "An act to establish the Bank of Kentucky," it was incorporated under the name and style of "The President, Directors, and Company of the Bank of Kentucky," with "power to contract and be contracted with, sue and be sued, plead and be impleaded, answer and be answered, defend and be defended in all courts and places and in matters as natural persons, with full power and authority to acquire, hold, possess, use, occupy, and enjoy, and to sell, convey, and dispose of all such real estate, goods, effects, and
30 chattels as shall be convenient for the transaction of its business, or which may be conveyed to said bank as surety for

any debt, or which may be received in discharge of any debt, or purchased in satisfaction of any judgment or decree in favor of the bank or in the purchase of any property on which said bank may have a lien." And by an act of the same body, approved February 15, 1858, entitled "An act to extend the chattels of the Bank of Louisville, Bank of Kentucky, and Northern bank," its charter as amended and its chartered privileges and rights were extended for the period of twenty years from the 1st day of October, 1864. Said acts and all amendments thereto are referred to as part hereof.

It says that under and by virtue of the terms of its charter, and as a part of the privileges given and requirements demanded of it thereby, and in consideration of its organization and management thereunder, it was authorized and bound by the cashier of its principal bank, on the 1st day of July of each and every year during the continuance of its charter, to pay to the treasurer of this Commonwealth fifty cents on each one hundred dollars of stock held and paid for in said bank, "which shall be in full of all tax or bonus."

Plaintiff avers that it has, pursuant to the terms and requirements of said acts, on the 1st day of July in each year, including the year 1882, during the time it was so required by its charter, by the cashier of its principal bank, paid to the treasurer of this Commonwealth fifty cents on each one hundred dollars of stock held and paid for in said bank, which payments, it avers, were and are in full of all tax or bonus.

The plaintiff states that soon after the adoption of said original act of incorporation, and in conformity with its terms and provisions, it organized and established said bank, with a branch at the seat of government, Frankfort, Kentucky, to aid in the management of the fiscal affairs of the State—said branch being known as and called the Branch Bank of Kentucky at Frankfort, Kentucky, which bank and branch bank have ever since been and still are in regular operation, doing the business authorized by its said charter; and for the location of the place or office of discount and deposit for said branch in the city of Frankfort, Kentucky, and for the safe and convenient transaction of its business, plaintiff purchased a lot or parcel of ground on the west side of St. Clair street in said city, and erected thereon a building suitable for a banking-house, which building includes rooms suitable for and used as a residence for the cashier of said branch bank and for one or more of its clerks, said building of such a character and so arranged as to promote and secure the convenient transaction of the business of said branch bank and the safety and protection of the property under its control—the portion or rooms therein devoted to the residence and use of the cashier and clerks in said branch bank surrounding and protecting as far as possible without incommoding its business, the banking-rooms and vault of said bank. Plaintiff says that neither said building nor the lot of ground on which it stands, nor any part of either is used or was purchased or intended for any other purpose or object than as stated, and all of said building and ground is convenient and necessary for the transaction of said business and the safety and security of said property.

31 The plaintiff further states that it was on January 10, 1882, the owner in fee-simple of a house and lot in the city of Frankfort, Kentucky, on the east side of St. Clair street, which formerly belonged to A. G. Hodges, and known as the "Old Commonwealth building," which said property was first mortgaged to it to secure an indebtedness due to it, created in the usual course of its business, for money loaned upon paper discounted at its bank, and was finally conveyed to and received by it in discharge and satisfaction of the said indebtedness due to it, which was for a sum much larger than the value of the property, and greatly larger than the sum for which it has since January 10, 1882, sold and conveyed the same. That from the time it acquired said property as aforesaid, the same has been held in the market for sale, but plaintiff was unable to dispose of the same to any purchaser until since January 10, 1882.

Yet the plaintiff says that notwithstanding the premises, the defendant, The Board of Councilmen of the City of Frankfort, has, recently and without authority of law, assumed and undertaken to levy a tax upon the house and lot last mentioned on the east side of St. Clair street, and upon a part of the real estate hereinafter mentioned used by the plaintiff in its business, and the defendant Kirtley, as deputy of the defendant Todd, marshal of the city of Frankfort, under the order and direction of the defendant, The Board of Councilmen of the City of Frankfort, has advertised in the newspaper published in said city called the "Tri-Weekly Yeoman" that he will on December the 4th, 1882, sell at public sale at the court-house door in the city of Frankfort, Kentucky, portions of said property belonging to plaintiff, which portions are described by said marshal in said advertisement as follows: (1) "Commonwealth building on St. Clair street, value $7,500," to raise the sum of $112.50, besides his pretended costs and commissions amounting as claimed to $11.75 more. (2) "Residence on St. Clair street used for cashier, value $5,000," to raise the sum of $75, besides his pretended costs and commissions amounting as claimed to $8 more, making in all the sum of $207.25, which the said defendant Kirtley will, unless immediately enjoined or restrained, sell said properties to realize under the pretense that the same is due from plaintiff to said Board of Councilmen of the City of Frankfort, as delinquent taxes on the property so advertised for sale for the year 1882.

Plaintiff says it does not owe the defendant, The Board of Councilmen of the City of Frankfort, the sum so claimed or any part of it for taxes on said property or any part of it for the year 1882 or for any other period; and that said Kirtley has no legal right or authority to make said proposed sale for the purpose stated, but unless enjoined and restrained he will do so according to said advertisement, to the great and irreparable injury of the plaintiff.

Plaintiff avers that he is without adequate remedy at law, and that no injunction has been heretofore asked for, and none has been refused by the court, by any circuit judge or by any one else.

Wherefore plaintiff prays that the defendants Todd and Kirtley

and The Board of Councilmen of the City of Frankfort and all others be enjoined and restrained from selling said properties
32 or any part thereof for the purpose above stated or for any other purpose or upon any other pretext whatever, and that said injunction be made perpetual. And it prays judgment for its costs and all other relief general or special to which it in law or equity may be entitled.

D. W. LINDSEY,
Att'y for Plaintiff.

A.W. Dudley says he is the president of the Branch Bank of Kentucky at Frankfort, Kentucky, and the chief officer and agent of the plaintiff at this time in this county, all of the officers of the principal bank being now absent from this county, and he believes the statements of the foregoing petition to be true.

A. W. DUDLEY.

Sworn to by A. W. Dudley before me this 21st day of November, 1882.

JOHN B. LINDSEY,
Notary Public, Franklin Co., Kentucky.

On the 21st day of November, 1882, the following summons issued on the foregoing petition:

The Commonwealth of Kentucky to the sheriff of Franklin county, Greeting:

You are commanded to summon the Board of Councilmen of the City of Frankfort, T. J. Todd, marshal, and J. E. Kirtley, deputy marshal of said city, to answer on the first day of the next May term a petition in equity filed against them in the Franklin common pleas court by the President, Directors, and Co. of the Bank of Kentucky, and warn them that upon their failure to answer the petition will be taken for confessed, or they will be proceeded against for contempt, and you will make due return of this summons on the first day of the next May term of said court.

Witness W. Franklin, clerk of said court, this 21st day of November, 1882.

W. FRANKLIN, *C. F. C. C.*,
By ROB'T B. FRANKLIN, *D. C.*

Executed on E. H. Taylor, Jr., mayor of the city of Frankfort; on T. J. Todd, marshal of the city of Frankfort, and John E. Kirtley, deputy marshal of the city of Frankfort, by delivering to him a copy of the within summons, November 28, 1882.

J. W. GAINES, *S. F. C.*

At a court held on the 23d day of November, 1882:

The plaintiff filed notice and moved the court to grant injunction as prayed for in the petition, which motion is laid over for hearing.

33 Franklin Common Pleas Court.

THE PRESIDENT, DIRECTORS, AND COMPANY OF THE BANK OF KENTUCKY, Plaintiff,

versus

THE BOARD OF COUNCILMEN OF THE CITY OF FRANKFORT; T. J. Todd, Marshal, and J. E. Kirtley, Deputy Marshal, of said City, Defendants.

The defendants, The Board of Councilmen of the City of Frankfort, T. J. Todd, marshal, and J. E. Kirtley, deputy marshal of said city, are hereby notified that on the fourth day of the present November term, 1882, of the Franklin common pleas court, the plaintiff, The President, Directors, and Company of the Bank of Kentucky, will apply to said court to grant an injunction according to the allegations and prayer of the petition in the above-styled cause now on file in the clerk's office of said court.

THE PRESIDENT, DIRECTORS & CO.
OF THE BANK OF KENTUCKY,
By D. W. LINDSEY, *Its Attorney.*

E. H. Taylor, Jr., mayor of the city of Frankfort, not being found, *and* executed the same on Board of Council- of the City of Frankfort, by delivering to H. Rodman, attorney for city of Frankfort, by delivering to him a copy of the within notice Nov. 23, 1882.

J. W. GAINES, *S. F. C.*

Executed on T. J. Todd and J. E. Kirtley by delivering to each of them a copy of the within, Nov. 20, 1882.

J. W. GAINES, *S. F. C.*,
By W. HUGHES, *D. S.*

E. H. Taylor, mayor of the city of Frankfort, not found, Nov. 23, 1882.

J. W. GAINES, *S. F. C.*,
By W. HUGHES, *D. S.*

At a court held on the 25th day of November, 1882:

Came the parties by their attorneys and the defendants, The Board of Councilmen of the City of Frankfort, T. J. Todd, marshal, and J. E. Kirtley, deputy marshal of said city, filed a demurrer to the petition, and the cause being heard on said demurrer and on the motion of the plaintiff for an injunction herein, and the court being advised, it is ordered that the demurrer be overruled, to which defendants except, and the clerk of this court will issue order of injunction agreeable to the prayer of the petition, enjoining the defendants and each of them from selling the properties described in the petition, or either of them or any part of either of them, for delinquent taxes claimed to be due the Board of Councilmen of the City of Frankfort until the further order of this court, upon the plaintiff executing to the defendants bond with good security, conditioned that the plaintiff will pay to the defendants such damages as they may sustain if it is finally decided that the injunction ought not to have been granted. To all of which the defendants except.

34 Franklin Common Pleas Court.

THE PRESIDENT, DIRECTORS, AND COMPANY OF the Bank of Kentucky *versus* CITY OF FRANKFORT, &c.	Injunction Bond.

We undertake that the plaintiffs, The President, Directors, and Company of the Bank of Kentucky, will pay to the defendants, The Board of Councilmen of the City of Franklin, Thos. J. Todd, marshal, and J. E. Kirtley, deputy marshal of said city, such damages as they or either of them may sustain if it is finally decided that the injunction in this action ought not to have been granted, Nov. 25, 1882.

E. L. SAMUEL.

Franklin Common Pleas Court.

THE PRESIDENT, DIRECTORS, AND COMPANY OF the Bank of Kentucky *versus* THE BOARD OF COUNCILMEN OF THE CITY OF Frankfort, &c.	General Demurrer.

The defendants and each of them come and demur to the petition herein, and say the same is not sufficient in law.

HUGH RODMAN,
Attorney for the Defendants.

At a court held on the 27th day of November, 1883:

The defendants moved the court to dissolve the injunction herein, and the matters of law arising on said motion and the demurrer to the petition being heard, the court overruled both the motion and the demurrer, to which rulings the defendants except.

Thereupon the Mayor and Board of Councilmen of the City of Frankfort filed their answer:

Franklin Common Pleas Court.

THE PRESIDENT, DIRECTORS, AND COMPANY of the Bank of Kentucky, Plaintiff, *versus* THE BOARD OF COUNCILMEN OF THE CITY of Frankfort; T. J. Todd, Marshal, and J. E. Kirtley, Deputy Marshal, of said City, Defendants.	Answer of the Board of Councilmen of the City of Frankfort.

The defendant, The Board of Councilmen of the City of Frankfort, for answer herein, says: It denies that plaintiff under and by virtue of the terms of its charter, and as a part of the privileges given and requirements demanded of it thereby, and in consideration of its organization and management thereunder, it was authorized and bound by the cashier of its principal bank, on the 1st day of July of each and every year during the continuance of its charter, to pay to the treasurer of this Commonwealth fifty cents on each one hundred dollars of stock held and paid for in said bank, "which shall be in full of all tax or bonus." It denies that said fifty cents so alleged to have been paid was in full of all tax due from the plaintiff. It denies that plaintiff has, pursuant to the terms and requirements of the said acts referred to in the petition, on the 1st day of July in each year, including the year 1882, during the time it was so required by its charter, by the cashier of its principal bank, paid to the treasurer of this Commonwealth fifty cents on each one hundred dollars of stock held and paid for in said bank, which payments were and are in full of all tax or bonus. It denies that all of said building and ground described in the petition is necessary for the transaction of the business of said bank or for the security or safety of said property. It denies that without authority of law it has recently assumed and undertaken to levy a tax upon the house and lot mentioned on the east side of St. Clair street, known as the "old Commonwealth building," and also upon a part of the real estate described in the petition and known as the "cashier's residence." It denies that the defendant Kirtley, as deputy marshal aforesaid, has no legal right or authority to make said proposed sale for the purpose stated.

It avers that by virtue of an act of the General Assembly of the Commonwealth of Kentucky, entitled "An act to amend and reduce into one the several acts in relation to the city of Frankfort," approved March 16, 1869, it has full power and authority to assess annually, levy and collect a tax not exceeding two dollars and fifty cents on the one hundred dollars' worth of property on all real estate within the limits of the city of Frankfort. Said act and all amendments thereto, and all the ordinances of this defendant are referred to and made part of this answer. It alleges that by regular assessment and levy there is due from plaintiff to it the taxes set out in the petition and the percentage due the defendants as marshal and deputy marshal of the city of Frankfort, and the costs and penalties therein stated. It says the rate of taxation fixed by it, by its order, for the year 1882 was $1.50 on the one hundred dollars valuation.

Having fully answered, it prays that the injunction granted herein be dissolved, and that the petition be dismissed, [illegible] for its costs and all proper relief to which it may be entitled.

HUGH RODMAN,
Att'y for Defendants.

Hugh Rodman says he is the attorney for the Board of Councilmen for the City of Frankfort, and that its chief officer, to wit, the mayor, is absent from Franklin county, and he believes the foregoing statements to be true.

HUGH RODMAN, *City Att'y.*

Sworn to and subscribed before me this the 27th day of November, 1883.

WM. CROMWELL,
Ex. F. C., Ky.

36 At a court held on the 6th day of May, 1884, the plaintiff filed a statement of the auditor of public accounts, also the agreement of parties in regard thereto:

Frankfort, *M'ch* 14, 1884.

Gen. D. W. Lindsey, attorney-at-law, Frankfort, Kentucky.

Dear Sir: In compliance with your request to state to you whether the Bank of Kentucky had regularly paid its tax to the State of Kentucky from its organization until now under the provisions of its charter, we have to say that an examination of the records in this office show that such tax was so paid.

Respectfully yours, FAYETTE HEWITT, *Auditor.*

It is agreed that the above and foregoing certificate and statement of Fayette Hewitt, auditor of public accounts for the State of Kentucky, shall be filed as evidence in the case of The President, Directors & Co. of the Bank of Kentucky *v.* Board of Councilmen of the City of Frankfort now pending in the Franklin common pleas court, and shall be proof of the fact that the plaintiff has during the time it was so required by its charter on the first day of July of each year, including the year 1882, paid to the treasurer of the Commonwealth of Kentucky fifty cents on each $100 of stock held and paid for in said bank.

HUGH RODMAN, *City Att'y.*
D. W. LINDSEY,
Att'y for Bank of Kentucky.

At a court held on the 16th day of May, 1884:

This day came the parties by their attorneys, and this cause being submitted upon the pleadings, exhibits and proof, and the argument of counsel, and the court being now sufficienly advised, it is adjudged that the injunction heretofore granted by this court be and the same is now hereby perpetuated, and the defendants and all others are perpetually enjoined and restrained from selling the properties mentioned and described in the petition, or any part thereof, for delinquent taxes claimed to be due by the plaintiff to the Board of Councilmen of the City of Frankfort. And it is further adjudged that the plaintiff recover of the defendants its costs herein expended and for which it may have execution, to all of which the defendants except and pray an appeal to the court of appeals, which is granted.

37 Kentucky:

Franklin Common Pleas Court.

I, W. Franklin, clerk of the court aforesaid, do certify that the foregoing fifty-eight pages and the above lines contain a full and complete transcript of the record and proceedings had in the cause therein mentioned.

Witness my hand this 9th day of August, 1884.

W. FRANKLIN, *C. F. C. C.*,
By ROBERT B. FRANKLIN, *D. C.*

At the same time counsel for appellant filed with the transcript a statement and an assignment of errors as follows:

THE BOARD OF COUNCILMEN OF THE CITY OF FRANKFORT, Appellants,
versus
THE PRESIDENT, DIRECTORS, AND COMPANY OF THE Bank of Kentucky, Appellee.
} Statement.

The judgment appealed from was rendered on the 16th day of May, 1884, at the May term of the Franklin common pleas court, and can be found on page 22 of this transcript. No summons desired.

SAME, Appellants,
versus
SAME, Appellees.
} Assignment of Errors.

The appellants assign for error the following: The court below erred in rendering the judgment appealed from herein and found on page 22 of the transcript.

HUGH RODMAN,
City Attorney, for Appellants.

Afterwards at a court of appeals held in and for the State of Kentucky at the capitol on the 11th day of October, 1884, the following order was entered:

BOARD OF COUNCILMEN OF CITY OF FRANKFORT
versus
THE PRESIDENT, DIRECTORS, AND COMPANY OF THE Bank of Kentucky.
} Franklin.

* * * * * * *

Ordered that these causes be continued for oral argument.

Afterwards at a court of appeals held as aforesaid, May 23, 1885, the following order was entered:

Ordered that these causes be continued for oral argument.

Afterwards at a court of appeals held as aforesaid, on December 15, 1885, the following order was entered:

Ordered that these causes be continued for oral argument.

Afterwards at a court of appeals held as aforesaid, on the 23d day of February, 1886, the following order was entered herein:

These causes came on and were argued by D. W. Lindsey for appellee, W. H. Julian for appellant, and laid over for further argument.

Afterwards on March 4, 1886:

These causes coming on to be further heard, were argued by D. W. Lindsey for Bank of Kentucky, A. Duvall for the Farmers' bank, and Wm. Lindsey for appellant, and submitted.

Afterwards at a court of appeals held as aforesaid, on the 5th day of June, 1888, the following judgment was entered:

City of Frankfort, Appellant,
versus
The Bank of Kentucky, Appellee.
} Apppeal from the Franklin Circuit Court.

The court being sufficiently advised, it seems to them there is no error in the judgment herein.

It is therefore considered that said judgment be affirmed, which is ordered to be certified to said court.

It is further considered that appellee recover of appellant its cost herein.

38 Commonwealth of Kentucky:

I, Abram Addams, clerk of the Kentucky court of appeals, certify that the foregoing 54 pages contain a true and complete transcript of the record and proceedings had in said court in the case of The Board of Councilmen of the City of Frankfort, appellant, against The Bank of Kentucky, appellee, except the petition for rehearing and proceedings thereon as appears from the records and on file in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of my office. Done at Frankfort, this 6th day of May, 1897.

ABRAM ADDAMS,
Clerk Ky. Court of Appeals.

The following is

Exhibit 3.

Resolutions of Stockholders of the Bank of Kentucky at a Meeting Held June 25, 1887.

At a meeting of the stockholders of the Bank of Kentucky, held at their banking-house in Louisville, Kentucky, Saturday, June 25, 1887, pursuant to notice legally given, John P. Morton was called to the chair and W. T. Rolph was appointed secretary. W. S. Macrae, Frank Miller, and Allen R. Hite having been duly appointed judges of the votes to be taken, and having been duly qualified, the following resolutions were submitted to a vote of the stockholders, with the result as stated below:

1st. *Resolved*, That the stockholders of the Bank of Kentucky hereby give their consent to the levying of the tax imposed by the provisions of article 2 of an act of the legislature of the State of Kentucky, entitled "An act to amend the revenue laws of the Commonwealth of Kentucky," approved May 17, 1886, so far as the same apply to the banks of this State, and agree to pay the tax as provided by said act, and waive and release all right under the charter of said bank to a different mode or smaller rate of taxation.

2d. *Resolved,* That the foregoing resolution, consent, agreement, waiver, and release be certified to the governor of this Commonwealth by the president of the board of directors of the Bank of Kentucky, under the corporate seal of said bank.

For

Accepting the provisions of article 2 of an act of the legislature of the State of Kentucky, entitled "An act to amend the revenue laws of the Commonwealth of Kentucky," approved May 17, 1886.

Voters.	Shares.	Votes.
262	14,221	8,805

Against

Accepting the provisions of article 2 of an act of the legislature of the State of Kentucky, entitled "An act to amend the revenue laws of the Commonwealth of Kentucky," approved May 17, 1886.

Voters.	Shares.	Votes.
None.	None.	None.

W. S. MACRAE,
FRANK MILLER,
ALLEN R. HITE, *Judges.*

Upon motion of Thomas L. Barret the meeting adjourned.

JOHN P. MORTON, *Chairman.*

W. T. ROLPH, *Secretary.*

39 The undersigned having been appointed by the board of directors of the Bank of Kentucky, Louisville, Ky., to take count and report to said board the vote of the stockholders of said bank, upon the adoption or rejection of the following resolutions, viz:

1st. *Resolved,* That the stockholders of the Bank of Kentucky, Louisville, Ky., hereby give their consent to the levying of the tax imposed by the provisions of article 2 of an act of the legislature of the State of Kentucky, entitled, "An act to amend the revenue laws of the Commonwealth of Kentucky," approved May 17, 1886, so far as the same apply to the banks of this State, and agree to pay the tax as provided by said act, and waive and release all right under the charter of said bank to a different mode of taxation.

2d. *Resolved,* That the foregoing resolution, consent, agreement, waiver, and release be certified to the governor of this Commonwealth by the president of the board of directors of said bank, under its corporate seal.

We do hereby certify that we did, on the 25th of June, 1887, proceed to take and count the vote of the stockholders of said bank cast upon the adoption or rejection of said resolutions, that there were 362 votes cast in favor of said resolutions and 0 votes for the rejection.

That the votes in favor of said resolutions represented a majority in interest of a quorum of the stockholders of said bank, that the number of votes to which the stockholders voting were entitled was 8,805.

That the number of stockholders voting in favor of said resolutions by proxy and in person was 362, and that the total number of the stockholders of said bank was 482.

The number of shares voted was 14,221.

W. S. MACRAE,
FRANK MILLER,
ALLEN R. HITE, *Judges.*

LOUISVILLE, KY., *June* 7, 1897.

I hereby certify that the above is a true copy.

E. W. HAYS, *Cashier.*

Subscribed and sworn to before me this 7th day of June, 1897.

JOHN B. HUNDLEY,
Notary Public, Jefferson Co., Ky.

Commission expires January 14, 1899.

40 The following is

EXHIBIT 4.

COMMONWEALTH OF KENTUCKY:

Pleas before the honorable the Kentucky court of appeals, at the capitol, in the city of Frankfort, on the first day of June, A. D. 1895, Chief Justice W. S. Pryor, Judges Joseph H. Lewis, James Hazelrigg, John R. Grace, Thomas H. Paynter, B. L. D. Guffy, and George B. Eastin sitting.

THE PRESIDENT, DIRECTORS, AND COMPANY of the Bank of Kentucky, Appellants,
versus
R. D. ARMSTRONG, Sheriff of Franklin Co., and Franklin County Court, Appellees.
Appeal from the Franklin County Circuit Court.

Be it remembered that heretofore, to wit, on the 28th day of February, A. D. 1894, the appellants by their counsel filed in the office of the clerk of the court of appeals a transcript of a record in words and figures following, to wit:

Be it remembered that on the 22d day of December, 1893, the plaintiff filed in the clerk's office the following petition, viz:

Franklin Circuit Court.

THE PRESIDENT, DIRECTORS, AND COMPANY OF the Bank of Kentucky, Plaintiff,
versus
R. D. ARMSTRONG, Sheriff of Franklin Co., and Franklin County Court, Defendants.
Petition in Equity.

The plaintiff states that it is a body politic and corporate under the corporate name and style of "The President, Directors, and Company of the Bank of Kentucky," created by and organized under an act of the General Assembly of the Commonwealth of Kentucky, approved February 22, 1834, with power to contract and be contracted with, sue and be sued, to carry on a general banking business, and with all the privileges and powers conferred, and the duties and obligations imposed upon it by said act and the amendments thereto, and with its principal place of business in the city of Louisville, county of Jefferson, and State of Kentucky: That by the terms of its charter, among other things, it was required to establish and maintain a branch of its bank to be located and continued at the seat of government "to aid in the fiscal affairs of the State:" That by the 15th section of its said charter it was enacted and provided in words and figures as follows:

"SEC. 15. That it shall be the duty of the cashier of the principal
bank on the first day of July, 1836, and on the first day of
41 July in each succeeding year, during the continuance of this
charter, to pay to the treasurer of this Commonwealth twenty-five cents on each one hundred dollars of stock held and paid for in said bank, which shall be in full of all tax or bonus: *Provided*, that the legislature may increase or diminish the same; but at no time shall the tax exceed fifty cents on each one hundred dollars of stock paid for in said bank."

By an act of the legislature, approved February 12, 1836, entitled "An act to increase the revenue," the amount it was required to pay into the public treasury on the first day of July, 1836, and on the first day of July each year during the continuance of its charter, in full of all tax or bonus, was increased to fifty cents on each share of one hundred dollars of stock held and paid for in said bank: That by the acts of the same body—the one, approved February 15, 1858, entitled "An act to extend the charters of the Bank of Louisville, Bank of Kentucky, and Northern bank," and the other, approved February 1, 1872, entitled "An act to amend the charter of the Bank of Kentucky"—its charter and its chartered privileges and duties as amended were extended to twenty-five years from and after October 1, 1884. The said acts of the legislature hereinbefore mentioned are referred to as parts hereof. And the plaintiff avers that in the said charter and the acts extending the same are clearly stated all of the rights, power, and reservations retained over the same, and that the intent that the legislature should not have the right to increase the rate of tax upon it or its property beyond fifty cents on each one hundred dollars of its stock held and paid for, but that that rate and mode of tax should be in full of all tax and bonus during the continuance of its charter as extended, is therein plainly expressed.

The plaintiff alleges that soon after the adoption of the original act of its *on* corporation, and in conformity to its terms and provisions, which were extended as aforesaid, it organized and established said bank, and, as required, established a branch thereof at the seat of government, Frankfort, Kentucky, as the fiscal agent of and to aid in the management of the fiscal affairs of the State, which branch is known as and is called the "Branch Bank of Kentucky at Frankfort, Kentucky," and is managed by a board of directors and other officers appointed by the board of directors of the principal bank at

Louisville, Kentucky, and under the advice and direction of the corporation's principal officers in that city, and which has been and is the fiscal agent of the State, and has done and performed, and is doing and performing all and every service required of it as such: That all the property and rights of every description belonging or appertaining to its said Branch bank at Frankfort are the property and rights of and belong to this plaintiff.

It further says that under and by virtue of its charter, extended and continued as aforesaid, and as part of the rights and privileges conferred and requirements demanded of it thereby, and in consideration of its organization and conduct thereunder, and of the establishment, management, and maintenance of its said principal bank and the said branch bank therein required, it was authorized and bound, by the cashier of its principal bank, on the first day of
July in each and every year from July 1, 1836, and during
42 the continuance of its charter, to pay to the treasurer of this
Commonwealth fifty cents on each one hundred dollars of stock held and paid for in said bank, and that the same should be in full of all tax or bonus.

The plaintiff avers that it has kept and performed all of the terms and requirements of said acts of the legislature, and by the cashier of its principal bank, at the proper times paid into the State treasury all taxes due by it thereunder.

The plaintiff states that in an action lately pending in this honorable court, wherein this plaintiff was the plaintiff, and J. W. Gaines, the then sheriff of Franklin county, and the defendant Franklin County Court, were defendants, and which had for its object the enjoining and restraining the defendants from assessing or attempting to assess the plaintiff or its property for county purposes, or collecting or attempting to collect any tax from plaintiff for county purposes, the questions were directly raised, presented, and decided by this court, and affirmed and held by the court of appeals (Franklin County Court *v.* Bank of Kentucky, 87 Ky. R., 376), that the charter aforesaid granted to plaintiff by the said act of 1834 created, and the said acts of 1858 and 1872 continued in force, between plaintiff and the State, an irrevocable contract by the terms of which the plaintiff was required to pay annually into the State treasury fifty cents on each one hundred dollars of its capital stock "in full of all tax or bonus," and that no other or further tax, State, county, or municipal, could be exacted from plaintiff. So it says that those questions are *res adjudicata* between it and the defendants to this action. It refers to as parts hereof the record of said action on file in this court, and the opinion and mandate of the court of appeals therein.

It further says, that in an act of the General Assembly entitled "An act to amend the revenue laws of the Commonwealth of Kentucky," approved May 17, 1886 (commonly known as the Hewitt bill), Gen. Stats., chap. 92, art. 2, it is provided:

SEC. 1. That shares of stock in State and national banks and other institutions of loan or discount, and in all "corporations required by law to be taxed on their capital stock, shall be taxed seventy-five cents on each share thereof equal to one hundred dollars, or on each one hundred dollars of stock therein owned by individuals, corporations, or societies; and said banks, institutions, and corporations shall, in addition, pay upon each one hundred dollars of so much of their surplus, undivided profits, or undivided accumulations as exceeds an amount equal to ten per cent. of their capital stock, the same rate of taxation that is assessed upon real estate, which shall be in full of all tax, State county, and municipal."

"Sec. 2. The cashier of a bank and the treasurer of any 'other institution or corporation whose stock is taxed, shall, on the first day of July in each year, report to the auditor of public accounts the true amount of the capital stock, the true amount of surplus, undivided profits, or undivided accumulations, and how or in what said surplus, undivided profits, or undivided accumulations is invested, and pay into the treasury the amount of tax due.'

"Sec. 4. That each of said banks, institutions, and corporations, by its proper corporate authority, with the consent of a ma-
43 jority in interest of a quorum of its stockholders at a regular
or called meeting thereof, may give its consent to the levying of said tax, and agree to pay the same as herein provided; and to waive and release all right under the acts of Congress, or under the charters of the State banks, to a different mode or smaller rate of taxation, which consent or agreement to and with the State of Kentucky shall be evidenced by writing under seal of such bank and delivered to the governor of this Commonwealth; and upon such agreement and consent being delivered, and in consideration thereof, such bank and its shares of stock shall be exempt from all other taxation whatsoever, so long as said tax shall be paid during the corporate existence of such bank."

The plaintiff alleges that at a called meeting of its stockholders, held June 25, 1887, a majority in interest of a quorum of such stockholders did vote their consent to the levying of the tax prescribed in *section I of article* 2 of the said act, entitled "An act to amend the revenue laws of the Commonwealth of Kentucky," approved May 17, 1886, and to the agreement to pay the same, and waive and release all right under its charter to a different mode or smaller rate of taxation; and at a meeting of the board of directors of plaintiff, held December 27, 1887, by resolutions of the said board it did consent to the levying of the tax prescribed by the first section of the second article of the act aforesaid, and agreed to pay the same, and to waive and release all right under its charter to a different mode or smaller rate of taxation; and the said consent or agreement, under the seal of plaintiff, was, before the meeting of the General Assembly next thereafter, delivered to the governor of this Commonwealth, and an attested copy thereof is filed herewith as a part of this petition.

It now says that on the first day of July, 1887, and on the first day of July each year since then down to and including the year 1893, its cashier has reported to the auditor of public accounts the true amount of its capital stock and surplus, undivided profits, or undivided accumulations, and how or in what said surplus, undivided profits or undivided accumulations were invested, and at the proper time paid into the treasury the amount of tax due under the said first section of the second article of the act aforesaid for each of said years except the year 1893. And in addition it, for each of said years, including 1893, gave into and listed with the county assessor, for taxation for county purposes, its real estate used by it for conducting its business, and has for each of said years paid the tax thereon.

The plaintiff avers that on July 1, 1893, it produced to the auditor of public accounts, in lawful legal-tender money of the United States, the amount necessary to pay to the State of Kentucky the taxes due from it under the said agreement, a copy of which is exhibited herewith and has heretofore been made a part hereof, to wit, the sum of $—, and tendered and offered to pay the same into the treasury in full of the taxes due from it under said agreement, and demanded of the auditor of public accounts a permit authorizing it to pay said amount into the treasury in full of said taxes, but said tender and offer was refused by said officer. It then in like manner produced to said officer the amount necessary to pay the taxes due from it under the terms of its charter extended as aforesaid, and of-
44 fered to pay the same into the treasury in full of all taxes due from it, and demanded of said officer a permit authorizing it to pay said amount into the treasury in full of said taxes, but its said tender and offer was refused by the auditor of public accounts. It then, under protest, and to prevent suits and prosecutions against it, on the demand of the auditor of public accounts, on said July 1, 1893, paid into the treasury the sum of $—, which was demanded of it by the auditor as the amount claimed by that officer to be due from it under and by virtue of an act of the legislature entitled "An act relating to revenue and taxation," which became a law November 11, 1892 (chap. 103, Acts 1891–'2–'3).

The plaintiff alleges it nor any part or portion of its property, rights, or franchise is or was assessable or taxable for county or any other purpose under the said chapter 103 of the Acts of 1891–'2'–3, nor for county purposes under any law. But notwithstanding its non-liability for assessment for taxation for county purposes, the auditor, treasurer, and secretary of State, acting as the board of valuation and assessment provided for in section 1, article 3, chapter 103, of the Acts of 1891–'2'–3, have without warrant or authority of law assumed to assess and value plaintiff's franchise for the tax year of 1892–'3, and the auditor, with like want of authority in law, has certified to the county clerk of Franklin that $195,000 of the value assumed as aforesaid to be placed by said board on plaintiff's franchise is liable for county, city, town, or district tax, and said clerk has delivered an attested copy of the auditor's said certificate, so far as the same relates to this plaintiff, to R. D. Armstrong, sheriff of Franklin county, to collect from plaintiff county taxes thereon (a copy of the said copy attested by said clerk and delivered to said sheriff is filed herewith as part hereof), and said Armstrong, sheriff, is now claiming the right to collect from plaintiff taxes for the purpose of the county of Franklin on said $195,000 at the rate of fifty-six and two-thirds cents on the one hundred dollars, and is threatening to levy upon and sell the property of this plaintiff to make the same, and unless enjoined and restrained from so doing will levy upon and sell the property of plaintiff to make said unauthorized tax.

And plaintiff alleges that the said act of the legislature of Kentucky, entitled "An act relating to revenue and taxation," which became a law November 11, 1892 (chapter 103, Acts 1891-'2-'3), and under the provisions of which the said board of valuation and assessment has attempted to assess this plaintiff, and that defendant Franklin County has attempted to tax plaintiff for county purposes, and the defendant Armstrong is attempting to collect said tax, was and is in violation of and repugnant to the constitution of the State of Kentucky and of these United States, in that by said act it is sought to impair the obligations of the contract between the plaintiff and the State of Kentucky, created by and continued in force by its said charter of 1834 and the said acts of 1858 and 1872 extending and continuing in force the same, and creating and arising out of the said act of May 17, 1886 (commonly known as the Hewitt bill), and the acts of plaintiff in relation thereto hereinbefore fully set out:

Wherefore, it avers that the said board of valuation and
45 assessment had no right or authority to make any assessment or valuation of its property or franchise or against it for taxation for any purpose, and especially for county or municipal purposes; and that the auditor of public accounts had no authority to certify to the county clerk any assessment or valuation against it, its property or franchise for taxation for county or municipal purposes; and said clerk had no authority to certify or list with said sheriff any assessment or valuation against its property or franchise for taxation for county or municipal purposes; and said Armstrong, sheriff, has no authority to collect from it any taxes for county or municipal purposes. Nevertheless, he is threatening so to do by the compulsory process of levy upon and sale of plaintiff's property.

Plaintiff says it has no remedy at law for its protection against the wrongs and injuries hereinbefore set out and complained of; that it would sustain great and irreparable injury by the levy upon and sale of its property by said sheriff as he is threatening, and as he will make if an injunction be not immediately granted restraining and enjoining him from making such levy and sale; and that no previous injunction has been granted, refused or applied for.

Wherefore the plaintiff prays that the defendant Armstrong, sheriff as aforesaid, be enjoined and restrained from levying upon or selling any property of the plaintiff or in any manner collecting from plaintiff any money as taxes for the purposes of Franklin county under said alleged and illegal tax-list, and that the defendant Franklin County, be enjoined from assessing or attempting to assess or from collecting or attempting to collect hereafter any tax upon the plaintiff, its property or franchise for county purposes, or any other.

WM. LINDSAY,
HUMPHREY & DAVIE,
HELM & BRUCE,
D. W. LINDSEY,
Attorneys for Plaintiff.

D. W. Lindsay says he is the president of the Branch Bank of Kentucky at Frankfort, and the chief officer or agent of the plaintiff corporation now in Franklin county, and that he believes the statements of the foregoing petition are true.

D. W. LINDSEY.

Subscribed and sworn to by D. W. Lindsay before me this December 22, 1893.

C. E. JAMES,
D. C. F. C. C.

Franklin Circuit Court.

THE PRESIDENT, DIRECTORS, AND COMPANY OF THE BANK OF Kentucky, Plaintiff,
versus
R. D. ARMSTRONG, Sheriff of Franklin County, and FRANKLIN County, Defendants.

This day came the plaintiff in the above-styled action by its attorney and applying for an injunction, and it appearing that 46 the judge of this court is now absent from this county, and it being made to appear to my satisfaction that great and irreparable injury will result to the plaintiff if an injunction as asked for in the petition be not immediately granted, an injunction is granted and will be issued by the clerk of this court, agreeable to the prayer of the petition, upon the plaintiff's executing before the clerk of this court bond with good security to the effect that the plaintiff will pay to the defendants such damages as they may sustain, not exceeding $1,500, if it be finally decided that the injunction ought not to have been granted.

THOS. B. FORD,
Clerk Franklin Circuit Court.

December 22, 1893.

Exhibit with Petition.

At a meeting of the board of directors of the Bank of Kentucky, held the 27th day of December, 1887, the following was offered, viz:

It appearing from the report of W. S. Macrae, Frank Miller, and Allen R. Hite, the persons appointed by the board of directors, of the president, directors, and company of the Bank of Kentucky, to take and report the votes of the stockholders of said bank as to paying the tax assessed upon banks and other corporations in this State, prescribed in section 1 of article 2 of an act entitled "An act to amend the revenue laws of the Commonwealth of Kentucky," approved May 17, 1886, which has been returned and filed with this bank, that a majority in interest of a quorum of the stockholders of this bank did, at a called meeting of such stockholders, held on the 25th day of June, 1887, at the office of said bank, vote their consent to the levying of said tax *agreement* to pay the same and to waive and release all right under its charter to a different mode or smaller rate of taxation. Now, therefore, "Resolved by the board of directors, of the president, directors, and company of the Bank of Kentucky, that the said bank does hereby consent to the levying of the tax prescribed by the first section of the second article of the act before named, and agrees to pay the same as provided by said act, and waive and release all right under the charter of said bank to a different mode or smaller rate of taxation.

"Resolved, That these resolutions, consent, waiver, and release be certified under the seal of this corporation, under the hand of the president, and attested by the cashier of the bank, and delivered by the president to the governor of the State of Kentucky."

[SEAL.] THOMAS L. BARRET, *President.*

E. W. HAYS,
Assistant Cashier.

I certify that the foregoing is a true copy of the original paper of what it purports to be, now on file in the office of the auditor of public accounts of the State of Kentucky.

Given under my hand this January 5, 1894.

L. C. NORMAN, *Auditor.*

47 Thereupon the plaintiff executed the following bond, to wit:

Franklin Circuit Court.

THE PRESIDENT, DIRECTORS, AND COMPANY OF the Bank of Kentucky
versus
R. D. ARMSTRONG, Sheriff of Franklin County, and Franklin County, Ky.
} Injunction Bond.

We undertake that the plaintiff, The President, Directors, and Company of the Bank of Kentucky shall pay to the defendants, R. D. Armstrong, sheriff of Franklin county, and Franklin County, Ky., the damages, not exceeding fifteen hundred dollars, which they or either of them may sustain if it be finally decided that the injunction ought not to have been granted.

Witness my hand this 22d day of Dec., 1893.

E. L. SAMUEL.

Attest:
THOS. B. FORD, *C. F. C. C.*,
By C. E. JAMES, *D. C.*

Thereupon the following summons and injunction was issued, to wit:

The Commonwealth of Kentucky to the coroner of Franklin county, Greeting:

You are commanded to summon R. D. Armstrong, sheriff of Franklin county, and Franklin County, Ky., to answer, on the first day of next January term of the Franklin circuit court, a petition in equity filed against them in said court by the President, Directors, and Company of the Bank of Kentucky, and warn them that upon failure to answer, the petition will be taken for confessed, or they will be proceeded against for contempt, and you will make due return of this summons on the first day of the next January term of said court.

Witness, Thos. B. Ford, clerk of the said court, this 22d day of December, 1893.

THOS. B. FORD, *Clerk*,
By C. E. JAMES, *D. C.*

(Endorsed.)

The defendants, R. D. Armstrong, sheriff of Franklin county, and Franklin County, are enjoined and restrained from levying upon or selling any property of the plaintiff, or in any manner collecting from plaintiff any money as taxes for the purposes of Franklin county under said alleged and illegal tax-list, and that the defendant Franklin County is enjoined from assessing or attempting to assess or from collecting or attempting to collect hereafter any tax upon the plaintiff, its property or franchise for county purposes, or any other.

Dec. 22, 1893.

THOS. B. FORD, *C. F. C. C.*

48 Executed by delivering a true copy of the within summons and injunction to R. D. Armstrong, sheriff of Franklin county, and B. G. Williams, county judge of Franklin county, this 22d day of Dec., 1893.

W. S. DEHONEY,
C. of F. Co.

Afterwards at a court held on the 18th day of January, 1894, the plaintiff filed an amended petition herein, as follows, to wit:

Franklin Circuit Court.

THE PRESIDENT, DIRECTORS, AND COMPANY of the Bank of Kentucky, Plaintiff,
versus
R. D. ARMSTRONG, Sheriff, &c., Defendants.
} Amended Petition.

The plaintiff amends its petition herein and says that at the filing of the original petition it did not have at hand the amounts left blank in the original petition as tendered and offered by it and paid by it into the treasury; but it now alleges that the said sum first mentioned by it in its original petition, as by it tendered and offered to be paid into the treasury on July 1, 1893, under the said agreement exhibited with the petition, was $16,177.87; and the amount tendered by it then under its charter as extended, as alleged in the petition, was $8,225.50; and the amount paid by it into the treasury under protest, as alleged in the petition, was $11,354.12.

It further avers that in addition the 56⅔ cents on the $100 of said $195,000 set out in the original petition which the defendant, Armstrong, sheriff, is threatening to coerce from it for county purposes, as set out in the original petition, the city of Frankfort is threatening to collect from it as taxes due it for the year 1893, $1.30 on the $100, on the alleged assessment and valuation of $195,000, and the city of Louisville is threatening to collect from it as taxes due to it 4 per cent. on its gross earnings, which gross earnings it avers were about $200,000, as taxes due to said city for the year 1893. And it avers that the said several amounts thus threatened to be coerced from it by the county of Franklin, city of Louisville, and city of Frankfort will amount to about the sum of $11,340, which, added to the amount paid by it into the treasury as hereinbefore stated, would aggregate the sum of $22,694.12. It avers that it does not owe to the county of Franklin, the city of Frankfort, or the city of Louisville, or either of them, the said sums respectively, or any part of either of said sums. Wherefore it prays as in its original petition.

LINDSAY AND OTHERS,
Attorneys for Plaintiff.

Afterwards at a court held on the 27th day of January, 1894, the plaintiff filed the following amended petition herein, to wit:

49 Franklin Circuit Court.

THE PRESIDENT, DIRECTORS, AND COMPANY of the Bank of Kentucky, Plaintiff,
versus
R. D. ARMSTRONG, &c., Defendants.
} Amended Petition.

The plaintiff amends its petition by adding thereto and saying: that before the institution of this suit, to wit, on the — day of ——, 1893, defendant R. D. Armstrong, being then and there the only elected, qualified, and acting sheriff of Franklin county, filed in the office of the clerk of the Franklin county court a report stating that plaintiff had been delinquent in failing to list for taxation at the then presiding assessment—that is, the assessment upon which the taxes for the year 1893 were to be paid, its notes, bonds, choses in action, and other property, alleged to have amounted to $250,000; that therefore a summons was issued commanding plaintiff to appear at the then ensuing term of the county court of said county and show cause, if any it could, why its property aforesaid should not be listed at the amounts aforesaid; that therefore, to wit, on the — day of ——, 1893, plaintiff did appear and file its answer and response, showing that it was not required by law to give into the assessor its property for taxation, and that it had reported to the auditor as required by law; and said court held and adjudged that plaintiff was not delinquent as to any of its property or assets, and dismissed the said proceedings at the county costs; that therefore the county of Franklin, as relator, made and perfected an appeal to this court from said order, and the same appeal came on for hearing on September 28, 1893; at its September term a judgment was duly rendered dismissing the said proceedings and giving plaintiff a judgment for costs against Franklin county, to which judgment the said Franklin county excepted and prayed an appeal to the court of appeals, which was granted. And the plaintiff in said proceeding and the defendant in this action, Franklin County, has filed a transcript of the record of said proceeding in the clerk's office of the court of appeals, and is in said court prosecuting its said appeals.

Wherefore plaintiff prays as in the original petition.

W. D. LINDSAY,
Attorney for Plaintiff.

Afterwards at a court held on the 27th day of January, 1894, the following judgment was rendered herein, to wit:

President, Directors, and Company of Bank of Kentucky
versus
R. D. Armstrong and Franklin County, &c.

The plaintiff filed an amended petition herein, to which the defendant demurred; the demurrer was sustained to petition as
amended, to which plaintiff excepts, and declining to amend
50 further the court filed an opinion herein, and it is adjudged
that plaintiff's petition be dismissed and defendant recover
of plaintiff its costs herein.

To all of which plaintiff excepts and prays an appeal to the court of appeals, which is granted.

The following is the opinion of the court referred to, viz:

Franklin Circuit Court.

Bank of Kentucky, Plaintiff,
versus } Judgment.
Franklin County, &c., Defendants.

This is a suit to enjoin the collection of county taxes levied under the provisions of the new revenue act which became a law November 11, 1892.

The petition sets out at length the charter of the bank, the amendments thereto, and the decisions of the court of appeals wherein it is held that the provisions of the original and amended charter created and constituted an irrevocable contract from which the State could not withdraw or recede without the consent of the bank. That the bank had such a contract with the State from the time it was chartered in 1834 to the time it accepted the provisions of the revenue law of 1886, known as the Hewitt bill, can hardly be questioned in the light of adjudications touching the chartered rights and privileges of this and like institutions.

In 1887 the plaintiff accepted the provisions of the Hewitt law in the manner prescribed therein, and it alleges that this acceptance made a contract with the State of the same binding force and validity, although different in terms, as the contract it had under its charter, and that the effort of the State *of* any of its subdivisions to collect any other tax than that mentioned in the act of 1886, is in violation of the provision of the constitution of the State and the United States.

To the petition the defendant enters a general demurrer; it therefore devolves on this court to construe article 2 of the act of 1886, and in like manner pass upon the validity of the new revenue act of 1892. Section 1 of article 2 of the Hewitt bill provides that each share of stock equal to $100 shall be taxed 75 cents, and that all surplus exceeding 10 per cent of the capital stock shall be assessed at the same rate as real estate is assessed, and that the taxes on these shares and surplus shall be in full of all tax, State, county, and municipal. Section 4 of the same article provides how the banks "may give consent to the levying of said tax and agree to pay the same as herein provided, and to waive and release all rights under the acts of Congress and under the charters of the State banks to a different mode or smaller rate of taxation." "And upon such agreement and consent being delivered, and in consideration thereof, such bank and its shares of stock shall be exempt from all other taxation whatsoever so long as said tax shall be paid during the corporate existence of such bank."

51 The language of these two sections is strong and seems to embody all the essential qualities necessary to constitute a valid contract between the banks and the State during the corporate existence of the banks accepting the provisions, and it is equally explicit in that only the tax on the shares of stock and the surplus therein defined shall be levied and collected.

It is contended, however, on the part of the defendants, that sections 6 and 7 of the same article place certain limitations and restrictions upon the provisions just above recited, and that the State intended to reserve and did reserve to itself the right and power to amend, repeal, modify, and enlarge the scope and meaning of the terms and conditions imposed by sections 1 and 4.

Section 6 is that the act under consideration shall be subject to the provisions of what is known as the act of 1856, the language of which is,

"That all charters and grants of or to corporations, or amendments thereof enacted or granted since the 14th of February, 1856, and all other statutes, shall be subject to amendment or repeal at the will of the legislature unless a contrary intent be therein plainly expressed."

Section 7 provides that in case any bank refuses to pay the tax imposed under this act ("Hewitt bill"), it shall be taxed for State, county, and municipal purposes as the taxable property in the hands of individuals, and it also provides:

"That nothing herein contained shall be construed as exempting *for* taxation for county and municipal purposes any real estate or building owned or used by said banks or corporation for conducting their business, but the same may be taxed for county and municipal purposes as other real estate is taxed."

This is indeed a confused and contradictory statute; the language of one section indicates that in case the bank pays the tax it shall be exempt from all other taxation during the corporate existence of the bank, while another section provides that this exemption shall be only during the pleasure and will of the legislature. One section says if the bank will pay the 75 cents tax on each $100 share of its stock, and the tax on its surplus, it shall be exempt from all other tax whatsoever, while another section says its real estate "may be taxed for county and municipal purposes," yet its real estate is as much represented by its shares of stock as any other asset of the bank.

Much has been appropriately said about the times and circumstances surrounding the passage of the Hewitt bill—that it was an effort on the part of the State to adopt an uniform system of taxation for this class of property, that the State was sadly in need of the revenue which the increased tax of twenty-five cents per share of stock would yield—that the banks which had contract rights under their charters were willing to surrender them and be placed on the same footing as those which had none, but that in accepting the provisions of the Hewitt bill they believed they were securing another contract of as binding force as the one surrendered, and that the State cannot afford to practice bad faith by making promises she did not intend to keep.

It is further said with equal force that if the banks are compelled
to pay taxes as required by the present revenue law, the
52 equality of taxation among banks will be destroyed, that cer-
tain county and municipal taxes will amount almost to the earnings of the capital stock of the banks in those localities, that bank capital receives but little if any benefit from county or municipal governments, while other classes of property receive many other benefits which the banks do not receive. On the other hand, this court cannot ignore the recent political history of the State which imposed upon the legislature the necessity of enacting a law of which the plaintiff now complains. When the new constitution was being discussed before the people for adoption or rejection, none of its provisions were more clearly defined or understood than those relating to taxation, and many bank officers and stockholders were earnest advocates for its adoption. And it is a fact that every bank community voted for the adoption of the new constitution, and those communities having the greatest number of banks gave therefor the largest majorities. In view of these facts it can hardly be contended that the holders of bank stock, especially those who favored the adoption of the new constitution, believed that they had an irrevocable contract under the Hewitt bill. But it is contended on the part of the plaintiff that section 6 of article 2 of the Hewitt bill was not intended to apply to sections 1 and 4 of the same article—that it has no more significance than if it were placed in article 1 or article 12. If such be the case, it ought to go a long ways toward maintaining the position that the terms of article 2 constituted a contract with the banks. In no other article of the bill, however, is reference made to the act of 1856, and in ascertaining the intention of the legislature, the courts will be governed not only by the language of the act, the position which one section thereof bears to the other—the purposes for which the law was

adopted, but also the history of the bill as contained in the journals kept by the two houses of the General Assembly. The journals of the senate and house of representives show that the Hewitt bill, which contains twelve articles, was considered more or less article by article, and that article 2 was considered by each house as if it constituted a separate act in itself. Efforts were made to exempt this article from the act of 1856, and without success. Failing in this, provision was attempted to be made that the act of 1856 should not apply to the provisions of article 2 until after the expiration of ten years, and this amendment was likewise defeated. The position of section 6 in article 2, together with the history of its enactment as shown by the journals of the two houses, clearly indicate the legislative intent.

After the passage of the Hewitt bill the plaintiff had the option to accept or reject its provisions. It elected to surrender its contract under its charter and accept those provisions, and, having so elected, this court is of the opinion that it cannot now be heard to say that the repeal of the Hewitt bill restored it to its original status under its charter.

It is ordered that the demurrer to the plaintiff's petition as amended be sustained, to which ruling of the court the plaintiff excepts, and the plaintiff being given leave but declining to plead further, it is ordered that the petition be dismissed and that the defendants recover their costs herein expended, and to all of which the plaintiff objects and excepts and prays an appeal to the court of appeals, which is granted.

53 STATE OF KENTUCKY, }
County of Franklin. }

I, Thomas B. Ford, clerk of the Franklin circuit court, do certify that the foregoing twenty-nine pages contain a true, perfect, and complete transcript of all the pleadings, orders, and proceedings, in the case mentioned therein, taken from the records of my said office.

Given under my hand, as clerk aforesaid, this the 19th day of February, 1894. The record in case of President, Directors, and Company of Bank of Kentucky *v.* J. W. Gaines & Co. not being copied because the same is now on file in the court of appeals.

THOMAS B. FORD, *Clerk.*

Upon which transcript was endorsed the following statement:

THE PRESIDENT, DIRECTORS, AND COMPANY OF THE BANK OF KENTUCKY, Appellant,
versus
R. D. ARMSTRONG, Sheriff of Franklin County, and FRANKLIN County, Appellees.

The judgment appealed from was rendered at the January term, 1894, of the Franklin circuit court, January 27, 1894, and can be found on page 22 of the Record.

The appeal was granted by the court below, and no summons is needed.

D. W. LINDSEY,
HUMPHREY & DAVIE,
HELM & BRUCE,
WM. LINDSAY,
For Appellant.

Afterwards at a court of appeals held as aforesaid, on March 5th, A. D. 1895, the following order was entered:

BANK OF KENTUCKY
v.
ARMSTRONG, Sheriff. } Franklin.

SAME
v.
CITY OF FRANKFORT. } Franklin.

* * * * * * *

By agreement of all the parties and on their motion it is ordered that these seventeen cases be heard together, and said causes coming on to be heard were argued by A. P. Humphrey for the banks and Ira Julian for the Commonwealth, counties and cities, and laid over until tomorrow for further hearing.

Afterwards on the 6th day of March, A. D. 1895, the following order was entered herein:

These cases coming on to be heard were argued by D. W. Lindsey for the banks, W. McD. Shaw and Hugh Rodman for the counties and cities, and laid over for further hearing on tomorrow.

Afterwards on March 7, 1895:

These causes again coming on to be heard were argued by Wm. Goebel for the banks and H. C. Barker for the cities and counties, and laid over for further hearing.

Afterwards on March 8, 1895:

These causes again coming on to be heard were argued by John W. Rodman and T. L. Edelen for the banks, and laid over for further hearing on tomorrow.

Afterwards on March 9, 1895:

These causes again coming on to be heard were argued by James P. Helm for the banks, and laid over for further hearing on next Tuesday.

Afterwards on March 12, 1895, the following order was entered herein:

These causes again coming on to be heard were argued by Wm. J. Hendrick for the Commonwealth and submitted.

Afterwards at a court of appeals held as aforesaid, on the 1st day of June, A. D. 1895, the following judgment was entered :

PRESIDENT, DIRECTORS, AND COMPANY OF THE Bank of Kentucky, Appellants, *versus* R. D. ARMSTRONG, Sheriff of Franklin County, and Franklin County Court, Appellees.	Appeal from the Franklin Circuit Court.

The court being sufficiently advised, it seems to them the judgment herein is erroneous. It is therefore considered that said judgment be reversed and cause remanded for further proceedings consistent with the opinion herein, which is ordered to be certified to said court.

It is further considered that the appellants recover of the appellees their cost herein expended.

Judges Lewis, Paynter and Guffy dissenting.

At the same time, to wit, on June 1, 1895, the court, through Chief Justice Pryor, delivered the following opinion :

COMMONWEALTH, for Use, &c., *v.* FARMERS' BANK OF KY.	Franklin.
FARMERS' BANK OF KY. *v.* BOARD OF COUNCILMEN OF CITY OF FRANKLIN.	Franklin.
FARMERS' BANK OF KY. *v.* COUNTY OF FRANKLIN, &C.	Franklin.
BANK OF KY. *v.* ARMSTRONG, Sheriff, &c.	Franklin.
PRESIDENT, DIRECTORS, AND COMPANY OF THE BANK of Ky. *v.* BOARD OF COUNCILMEN OF CITY OF FRANKFORT, &C.	Franklin.
COMMONWEALTH, for Use, &c., *v.* BANK OF KY.	Franklin.
SAME *v.* DEPOSIT BANK OF FRANKFORT.	Franklin.
DEPOSIT BANK OF FRANKFORT *v.* FRANKLIN COUNTY, &C.	Franklin.

Commonwealth, for Use, &c., *v.* Frankfort National Bank.	Franklin.
Same *v.* State National Bank.	Franklin.
Third National Bank *v.* City of Louisville, &c.	Jefferson C. P. Div.
55 Louisville Banking Co. *v.* Same.	Jefferson C. P. Div.
City of Louisville, &c., *v.* President, Directors, and Company of the Bank of Ky.	Jefferson C. P. Div.
President, Directors, and Company of the Northern Bank of Ky. *v.* Bourbon County.	Bourbon.
City of Covington *v.* First National Bank of Covington.	Campbell.
Same *v.* German National Bank of Covington.	Campbell.
Farmers' Bank of Ky. *v.* City of Henderson.	Henderson.

(Filed June 1, 1895.)

Commonwealth of Kentucky:

I, Abram Addams, clerk of the Kentucky court of appeals, hereby certify that the foregoing 69 pages (being numbered 1 to 65 inclusive, with four interpolated numbers, viz: "page 1 continued" and numbers 32½, 33½, and 34½), contain a true, full, and complete transcript of the record and proceedings had in said court in the case of The President, Directors, and Company of the Bank of Kentucky, appellants, against R. D. Armstrong, sheriff of Franklin county, and Franklin County Court, appellees, as the same appears on file and of record in my office (except the petition for a rehearing and the proceedings upon same).

In testimony whereof I have hereunto set my hand and affixed the seal of my office. Done at Frankfort, Kentucky, this 10th day of April, A. D. 1897.

ABRAM ADDAMS,
Clerk Kentucky Court of Appeals.

My fee for this transcript, $26.50.

The following is

EXHIBIT 5.

Franklin Circuit Court.

JANUARY 21, 1896.

THE PRESIDENT, DIRECTORS, AND COMPANY OF THE Bank of Kentucky, Plaintiff, *versus* R. D. ARMSTRONG, Sheriff, &c., Defendants.	Judgment.

This day came the parties by their attorneys, and this cause having been heretofore submitted for a judgment conforming to the opinion and mandate of the court of appeals heretofore filed, reversing the former judgment of this court, and the court being now sufficiently advised: It is adjudged that article 2 of the act of the General Assembly, entitled "An act to amend the revenue laws of the Commonwealth of Kentucky," approved May 17, 1886, (Gen. Stats., chap. 92, art. 2), and the acceptance of the provision thereof by the plaintiff, constituted a contract between the plaintiff and the Commonwealth, which the latter cannot alter or change without the consent of the former; by the terms of which contract the plaintiff cannot, during the continuance of its charter be assessed for taxation or taxed for State purposes in a different mode or at a greater rate of taxation than as prescribed in the said act, and can be assessed for taxation and taxed for county and municipal purposes only
56 upon its real estate used by it in conducting its business: That the provisions of the present constitution of this State and the act of November 11, 1892 (art. 3, chap. 103, Acts 1891-'1-'3), in so far as they were intended to provide for any assessment or taxation of the plaintiff's property, rights of property or franchise, except to assess a tax for county and municipal purposes, its real estate used in conducting its business, are in violation of and repugnant to the Federal Constitution and void: That the board of valuation and assessment provided for in said act of November 11, 1892, had and has no authority in law to assess or value the plaintiff's franchise for taxation, or the auditor to apportion or certify the same or any part of the same for county or municipal taxation: That the temporary injunction which was granted in this cause at the commencement of the action be and the same is now made perpetual, and the defendants, Franklin County and R. D. Armstrong, sheriff of said county, be and each of them are perpetually enjoined and restrained from levying upon or selling any property of the plaintiff, or in and manner collecting from the plaintiff any taxes for the purposes of Franklin county upon the franchise or property

of the plaintiff, except taxes upon its real estate used in conducting its business. And it is further adjudged that the plaintiff recover of the defendant its costs in this action expended.

I, Thos. B. Ford, clerk of the Franklin circuit court, certify that the foregoing is a true copy of the judgment in the above-entitled action lately pending in said court.

Witness my hand as clerk of said court this April 5, 1897.

THOS. B. FORD, *C. F. C. C.*,
By J. R. ELLIOTT, *D. C.*

57 The following is

EXHIBIT 6.

COMMONWEALTH OF KENTUCKY:

Pleas before the honorable the Kentucky court of appeals, at the capitol, in the city of Frankfort, on the first day of June, A. D. 1895, Chief Justice W. S. Pryor, Judges Joseph H. Lewis, James H. Hazelrigg, John R. Grace, Thomas H. Paynter, B. L. D. Guffy, and George B. Eastin sitting.

THE PRESIDENT, DIRECTORS, AND COMPANY of the Bank of Kentucky, Appellants, *versus* BOARD OF COUNCILMEN OF THE CITY OF Franfort and J. M. Hallnan, Tax Collector for the City of Frankfort, Appellees.	Appeal from the Franklin Circuit Court.

Be it remembered that heretofore, to wit, on the 2d day of October, A. D. 1894, the appellants, by their counsel, filed in the office of the clerk of the court of appeals a transcript of a record in words and figures following, to wit:

Pleas before the honorable judge of the Franklin circuit court, at the court-house, at Frankfort, Ky.

Be it remembered that on the 6th day of September, 1894, the President, Directors, and Company of the Bank of Kentucky filed in the clerk's office of said court its petition herein, which is in words and figures, viz:

Franklin Circuit Court.

THE PRESIDENT, DIRECTORS, AND COMPANY OF THE Bank of Kentucky, Plaintiff, *versus* BOARD OF COUNCILMEN OF THE CITY OF FRANKFORT and James M. Hallnan, Tax Collector for the City of Frankfort, Defendants.	Petition in Equity.

The plaintiff states that it is a corporation, under the corporate name and style of "The President, Directors, and Company of the Bank of Kentucky," created by and organized under an act of the

General Assembly of the Commonwealth of Kentucky, approved February 22, 1834, entitled "An act to establish the Bank of Kentucky," with power to contract and be contracted with, sue and be sued, to carry on a general banking business, and with all the privileges and powers conferred, and the duties and obligations imposed, upon it by said act and the amendments thereto, and with its principal place of business in the city of Louisville, county of Jefferson, and State of Kentucky: The fifteenth section of its said charter is in words and figures as follows:

58 "Sec. 15. That it shall be the duty of the cashier of the principal bank on the first day of July, 1836, and on the first day of July in each succeeding year, during the continuance of this charter, to pay to the treasurer of this Commonwealth twenty-five cents on each one hundred dollars of stock held and paid for in said bank, which shall be in full of all tax or bonus: *Provided*, that the legislature may increase or diminish the same; but at no time shall the tax exceed fifty cents on each one hundred dollars of stock paid for in said bank."

That by an act of the legislature, approved February 12, 1836, entitled "An act to increase the revenue," the amount the plaintiff corporation was required to pay into the public treasury on the first day of July, 1836, and on the first day of July each year during the continuance of its charter, in full of all tax or bonus, was increased to fifty cents on each share of one hundred dollars of stock held and paid for in said bank.

That by an act of the legislature, approved February 15, 1858, entitled "An act to extend the charter of the Bank of Louisville, Bank of Kentucky, and Northern bank," the charter of the plaintiff corporation was extended and continued in full force for twenty years from October 1st, 1864; and by an act of the same body, approved February 1st, 1872, entitled "An act to amend the charter of the Bank of Kentucky," said charter was extended and continued in full force for twenty-five years from October 1st, 1884.

The said several acts of the legislature are referred to and made parts of this petition.

The plaintiff avers, that in the said charter and in the acts extending the same, are clearly stated all the rights, powers and reservations retained over the same; and that the intent that the State should not have the right to increase the tax upon it or its property for any purpose whatever, beyond the annual rate of fifty cents on each one hundred dollars of its stock held and paid for, but that that rate and mode of tax should be in full of all tax and bonus during the continuance of its charter as extended, is in its charter and also in the acts extending the same plainly expressed. And plaintiff alleges that in the actions lately pending and decided in this court and appealed to the court of appeals, of this plaintiff against Franklin county, etc., and of this plaintiff against the defendant, The Board of Councilmen of the City of Frankfort, and its then tax collector, the court of appeals in its opinion (87 Ky., 370), held: That plaintiff's charter created, and the said acts of 1857 and 1872 continued in force an irrevocable contract by the terms of which the plaintiff was required to pay annually into the State treasury fifty cents on each one hundred dollars of its capital stock "in full of all tax or bonus," and that no other or further tax, State, county, or municipal, could be exacted from plaintiff. It refers to as parts hereof the records of said actions on file in this court, and the opinion and mandate of the court of appeals therein.

The plaintiff alleges that soon after the adoption of the original act of its incorporation, and in conformity to its terms and provisions, which were extended as aforesaid, it organized and established said bank, and from time to time as required the branches provided for in the original charter and the said acts extend-
59 ing the same, and, as required, established a branch of its
bank at the *seat* of government, Frankfort, Kentucky, as the fiscal agent of and to aid in the management of the fiscal affairs of the State, which branch is known as and is called the "Branch Bank of Kentucky at Frankfort, Kentucky," and is managed by a board of directors and other officers appointed by the board of directors of the principal bank at the city of Louisville, Kentucky, and under the advice and direction of the corporation's principal officers in that city, and has no legal existence as distinct from the principal bank. That the bank and branch so established have been maintained continuously to the present time under its said charter extended as aforesaid, exercising the powers, franchises, and privileges therein conferred, and performing all the duties and obligations therein imposed. That its said branch bank at Frankfort, Kentucky, has been and is the fiscal agent of the State, and has done and performed and is doing and performing all and every service required of it as such agent.

That all the property and rights of every description belonging or appertaining to its said branch bank at Frankfort are the property and rights of this plaintiff.

It further says that under and by virtue of its charter, extended and continued as aforesaid, and as part of the right and privileges conferred and requirements demanded of it thereby, and in consideration of its organization and conduct thereunder and of the establishment, management, and maintenance of its principal bank and branch bank therein required, it was authorized and bound, by the cashier of its principal bank on the first day of each and every year from July 1, 1836, and during the continuance of its charter, to pay to the treasurer of this Commonwealth fifty cents on each one hundred dollars of stock held and paid for in said bank, and that the same should be in full of all tax or bonus. It now avers that it has kept and performed all of the terms and requirements of its charter and the said acts of the legislature extending the same; and has on the 1st day of July, 1836, and on the 1st day of July in every year up to and including the year 1886, by the cashier of its principal bank paid into the State treasury the tax of fifty cents on each share of $100 of its stock held and paid for.

By an act of the General Assembly entitled "An act to amend the revenue laws of the Commonwealth of Kentucky," approved May —, 1886, and commonly known as the Hewitt bill (Gen. Stats., chap. 92, art. 2), it is provided:

Sec. 1. That shares of stock in State and national banks and other institutions of loan or discount, and all corporations required by law to be taxed on their capital stock, shall be taxed seventy-five cents on each share thereof equal to one hundred dollars or on each one hundred dollars of stock therein owned by individuals, corporations, or societies, and said banks, institutions, and corporations shall, in addition, pay upon each one hundred dollars *of* so much of their surplus, undivided profits, or undivided accumulations as exceeds an amount equal to ten per cent. of their capital stock, the same rate of taxation that is assessed upon real estate, which shall be in full of all tax, State, county, and municipal.

60 Sec. 2. The cashier of a bank, and the treasurer of any other institution or corporation whose stock is taxed, shall, on the first day of July in each year, report to the auditor of public accounts the true amount of the capital stock, the true amount of surplus, undivided profits, or undivided accumulations, and how or in what said surplus, undivided profits, or undivided accumulations, *and how or in what said surplus, undivided profits, or undivided accumulations is* invested, and pay into the treasury the amount of tax due.

Sec. 4. That each of said banks, institutions, and corporations by its proper corporate authority, with the consent of a majority in interest of a quorum of its stockholders, at a regular or called meeting thereof, may give its consent to the levying of said tax, and agree to pay the same as herein provided, and to waive and release all right under the acts of Congress, or under the charters of the State banks to a different mode or smaller rate of taxation, which consent or agreement to and with the State of Kentucky shall be evidenced by writing under seal of such bank and delivered to the governor of this Commonwealth; and upon such agreement or consent being delivered, and in consideration thereof, such bank and its shares of stock shall be exempt from all other taxation whatsoever so long as said tax shall be paid during the corporate existence of such bank.

The plaintiff states that at a called meeting of its stockholders, held June 25, 1887, a majority in interest of a quorum of such stockholders did vote their consent to the levying of the tax prescribed in section 1 of article 2 of the said act entitled "An act to amend the revenue laws of the Commonwealth of Kentucky," approved May 17, 1886, and to the agreement to pay the same, and waive and release all rights under its charter to a different mode or smaller rate of taxation; and at a meeting of the board of directors of plaintiff, held December 27, 1887, by resolutions of said board it did consent to the levying of the tax prescribed by the first section of the second article of the act of May 17, 1886, aforesaid, and agreed to pay the same and to waive and release all right under its charter to a different mode or smaller rate of taxation; and the said consent or agreement, under the seal of plaintiff, was, before the meeting of the General Assembly next thereafter, delivered to the governor of this Commonwealth, and a certified copy thereof is filed herewith as a part of this petition.

It now alleges that through its cashier it has made its reports, in proper form as required by said act, to the auditor of public accounts on the first day of July in each and every year from and including the year 1887 up to this time, and has, on the first day of July in each and every of said years until 1893, paid into the State treasury the full tax required by said act, being seventy-five cents on each share of its capital stock, and in addition the same rate of taxation that was for each of said years *respectfully* assessed upon real estate upon each one hundred dollars of so much of its surplus, undivided profits, or undivided accumulations as exceed an amount equal to ten per cent. of its capital stock, and was only prevented from paying the whole of said tax for the first day of July, 1893, and the first day of July, 1894, by the refusals of the auditor, the fiscal agent of the
State for each of said dates, to receive the same. And it has
61 also, from and including the year 1887 up to and including
the year 1894, for each of said years, listed with the assessors for the counties and cities where its principal — and branch are located, for taxation for county and city purposes, its real estate used by it in conducting its business, and for each of said years paid to each of the cities and counties where its principal office and branch are located the full amount of tax for county and municipal purposes assessed on all the real estate and buildings in which the principal bank and its branch bank conducted their business.

On the first day of July in each of the years 1893 and 1894 the plaintiff's cashier made, as he had regularly done for years before, written reports to the auditor of public accounts, verified by his oath as required by law, of the true amount of the capital stock of its bank, and of its surplus, undivided profits, and accumulations; and did on the first day of July, 1893, successively tender and offer to pay into the treasury, and demanded of the auditor permits to pay into the treasury, first, the sum of $8,225.50, the maximum tax for that year required by its charter, to wit, fifty cents for each one hundred dollars of stock held and paid for in its bank, and, second, the sum of $16,177.86, the full amount of the tax for that year required and due under the aforesaid act, approved May 17, 1886. But both of said offers and tenders and demands were successively refused and rejected by the said auditor of public accounts, who, as the State's agent, refused to accept or to allow plaintiff to pay into the treasury any other or greater sum than the sum of $11,354.12, which amount he claimed and demanded as due to the State as the tax for that year on the franchise of plaintiff under an act of the legislature entitled "An act relating to revenue and taxation," which became a law November 11, 1893; and under protest plaintiff paid said last-named sum into the State treasury. And it did, on the first day of July, 1894, successively tender and offer to pay into the treasury, first, the sum of $8,225.50, the maximum tax for that year required by its charter, to wit, fifty cents for each one hundred dollars of stock held and paid for in its bank, and, second, the sum of $16,260, the full amount of the tax for that year required and due under the aforesaid act, approved May 17, 1886. But both of said offers and tenders and demands were successively refused and rejected by the said auditor of public accounts, who, as the State's agent, refused to accept or to allow plaintiff to pay into the treasury any other or greater sum than the sum of $11,374.49, which amount he claimed and demanded as due to the State as the tax for that year on the franchise of plaintiff under an act of the legislature entitled "An act relating to revenue and taxation," which became a law November 11, 1892; and under protest plaintiff paid said last-named sum into the State treasury. The said offers, tenders, and demands were on each of said occasions refused and rejected by the said auditor, under the claim made by him that both the tax provisions of plaintiff's charter and the said act to amend the revenue laws approved May 17, 1886, had been superseded and repealed by the new constitution of the State of Kentucky, which went into operation September 28, 1891, and the aforesaid act of November 11, 1892.

62 The plaintiff, protesting against said constitution and said acts as illegal in their application to the taxation of plaintiff, acceded to the said auditor's demands and under protest as aforesaid paid into the State treasury the sums above named as paid. The plaintiff has further paid to the sheriff and proper collecting officers in the counties and cities where its principal office and branch are located the sums assessed or claimed to be due by it, on its tangible property in said counties and cities for said years 1893 and 1894, to the State, said counties, and cities.

By the terms of the act aforesaid, which went into effect November 11, 1892, entitled "An act relating to revenue and taxation" (chapter 103, Acts 1891-'2-'3), it is provided that all banks and other corporations, besides the taxes to the State treasury therein provided for, should also pay to the counties and cities in which they may be located or doing business, taxes, not only on all its tangible property located in such counties and cities, but also the "franchise" of said corporation, which is a term used to describe all the other property and assets of said corporation. That said county and municipal taxation shall be at the same rate that other property is assessed or taxed; that when a corporation has offices or conducts its business in more than one county of the State, it is the duty of the State "board of valuation and assessment," created by said act, to apportion to the several counties and cities in which the bank or corporation is located, or conducting its business, the part of the "franchise" of the bank or corporation which may be taxed in each of said counties and cities. By an act of the General Assembly, approved June 14, 1893, entitled "An act for the government of cities of the third class," to which class the defendant, The City of Frankfort, whose corporate name is the Board of Councilmen of Frankfort, belongs, the cities of that class are authorized, so far as the legislature can confer such powers, to assess annually, levy, and collect taxes on all the property of said banks and corporations located in said cities, and also on such portion of the "franchise" of such banks or corporations as may, by the said board of valuation and assessment, be assigned to such cities for local taxation.

By said act the common council- of said cities are authorized at their first meeting in April in each year to elect a collector of taxes, who, among other duties, is required "to list for taxation any property he may find has been omitted, and he shall report such lists to the city clerk, who shall endorse same on the tax book and charge the collector therewith, and the collector shall have the same power to collect said lists as if they had been originally listed by the assessor." And in pursuance of the power so granted the common council of the city of Frankfort did, at its first regular meeting in April, 1894, elect the defendant, James M. Hallnan, to the office of tax collector for said city for the year 1894, and he has been since then and is now such collector. Prior and up to the enactment of the said act of June 14, 1893, the city of Frankfort was a municipal corporation under the corporate name aforesaid, having for its charter an act of the General Assembly, approved March 16, 1869, entitled "An act to amend and reduce into one the several 63 acts relating to the city of Frankfort," by the provisions of which said city was authorized, so far as the legislature could confer such powers, to assess annually, levy, and collect taxes on all real estate within the limits of said city, and all bank stocks, bridge stocks, manufacturing stocks, or any other kind of stocks, money notes, or bonds of cities, towns, corporations, or States, choses in action, and all personal estate of every kind, not exempt by law from execution, belonging to citizens of the city of Frankfort, and any capital or other property belonging to any other corporation or citizen of any other place employed in said city. Under each of the said acts of March 16, 1869, and June 14, 1893, it is required that the assessments of property for taxation shall be made as of the 10th day of January in each year.

Each of the said several acts of the General Assembly are referred to and made parts of this petition.

The plaintiff states that said city of Frankfort did, in accordance with its said charters, respectively, order in due form of, and at the proper time, assessments for taxation for the years 1892, 1893, and 1894 upon all the property provided by said charters respectively to be assessed; but it alleges that neither it nor any part or portion of its property, rights, or franchise is or was assessable or taxable in either of the years 1892, 1893, or 1894 for city or any other purposes under the said act of November 11, 1892 (chapter 103 of the Acts of 1891–'2–'3), nor for city purposes under either of said city charters or any law. And no assessment was made or attempted to be made against it for said city in either of said years, nor at any time except as hereinafter stated.

But notwithstanding its non-liability for assessment for taxation, and especially municipal or county purposes, the said "board of valuation and assessment" provided for in section 1, article 3, chapter 103 of the Acts of 1891–'2–'3 aforesaid, have, without warrant or authority of law, assumed to assess and value and has assessed and valued plaintiff's "franchise," which is, as before stated, a term

used to describe all of the corporation's property and assets other than its tangible property, for the tax year 1893 and 1894, and to make approtionment thereof as aforesaid; the part thereof apportioned by reason of its said branch bank located, as aforesaid, in the city of Frankfort, in the county of Franklin, as taxable by said city and county, being for the year 1893 fixed and valued at $195,000, and for the year 1894 at $190,000, and the auditor, with like want of authority in law, has certified the said valuations and apportionments for each of said years to the county clerk of Franklin county as liable for county and city taxation, and said clerk has delivered attested copies of the auditor's said certificate to the officers respectively charged with the collection of taxes for that county and city. And the defendant James M. Hallnan, collector of taxes for said city for the year 1894, has without warrant or authority in law, and without notice to or the knowledge of plaintiff, assumed to list and has listed against plaintiff for taxation by said city as omitted property, and has reported such lists to the city clerk, who has indorsed the same on the tax book as of and for the year 1892 property described as "notes, money, choses in action, and other property of the value of $250,000;" and as of and for the
64 year 1893 property described as "notes, money, choses in action, and other property of the value of $195,000;" and as of and for the year 1894 property described as "notes, money, choses in action, and other property of the value of $190,000." The plaintiff alleges that the property so attempted to be listed for taxation by the defendant Hallnan, collector of taxes as aforesaid, was the intangible property in the hands of its said branch bank, and was reported to the said "board of assessment and valuation," and was by said board estimated and fully covered in said board's assessment and valuation, as aforesaid, of plaintiff's franchise for the years 1893 and 1894.

The plaintiff states that it was compelled by the contract between it and the State made by the said act of May 17, 1886, known as the Hewitt bill, and its agreement to pay the taxes prescribed by the first section of the second article of said act in full of all tax, State, county, and municipal to and did pay into the State treasury on the first day of July, 1892, the taxes prescribed by said section to wit, the sum of $16,573.23; yet the defendant, The City of Frankfort, is claiming and demanding of it under the said pretended assessment of the defendant Hallnan, collector as aforesaid, for the said year 1892 as taxes due to it the sum of $3,125; and said city is claiming under said alleged assessments against it of $195,000 for 1893 as city taxes the sum of $2,535, and said assessment of $190,000 for 1894 the sum of $2,660 and the sum of $773 for penalties and interest to August 27, 1894, on the said alleged taxes for 1893 and 1894. And in addition, on the said alleged assessment and valuation of its "franchise," the county of Franklin and the city of Louisville are each claiming against plaintiff sums for county and city taxes respectively for the said years 1893 and 1894, which said several sums claimed each year for local taxes by said cities and county when added to the amount paid by plaintiff into the treasury as aforesaid for each of those years will aggregate an amount largely in excess of the amount that could be *could be* claimed of the plaintiff either under its charter or under the said act of May 17, 1886.

It avers that it does not owe to the city of Frankfort the said alleged sums or others, or any part of either of them, as taxes or penalties or interest, or the city of Louisville or the county of Franklin, or either of them, the said sums respectively, or any part of either of said sums; that the defendants, James M. Hallnan, collector as aforesaid, of the said city of Frankfort, had no power or authority under the charter of the city of Frankfort, or otherwise, to make the said alleged assessments, or either of them, or to impose or collect said penalties or interest, or any part of either; that the said "board of assessment and valuation" had no power or authority to make the said assessment and valuations of plaintiff's franchise, or either of them, and said city nor its collector has any right or authority to demand or collect any penalty or interest for nonpayment of any taxes. That the said charters of the city of Frankfort, and the said act, entitled "An act relating to revenue and taxation," which became a law November 11, 1892, and each of them, in so far as they or either of them prescribed additional or different
taxation of plaintiff or its property for the benefit of cities or
65 counties, are repugnant to and in violation of the Constitution of the United States, prohibiting any State from passing any law impairing the obligation of contracts, and were and are wholly void. It alleges that the granting and acceptance of its charter and the several acts extending and continuing the same, which were accepted and acted upon by it, constituted a contract between the State on the one part and this plaintiff and its stockholders on the other part, continuing during the legal existence of plaintiff corporation, and that the State of Kentucky never had, and now has not, the right to repeal, alter, or annul said agreement or the rights conferred by said charter limiting the rights of the State to impose a tax on plaintiff or its property without its consent.

The plaintiff states that it did, in the manner and form hereinbefore stated, and upon the considerations recited in the first and fourth sections of the second article of the said act entitled "An act to amend the revenue laws of the Commonwealth of Kentucky," approved May 17, 1886, give its consent to the levying of the tax prescribed by the said first section of the second article of said act, and agreed to pay the same and to waive and release its rights under its charter to a different mode or smaller rate of taxation than is in said first section provided. Such consent and waiver was made in good faith by it and under the belief that the agreement so made would endure during its corporate existence. And it now submits that such is the true construction of said act, and that the proposition from the State contained in said act, and its acceptance by plaintiff, in the manner and form stated, constituted a contract which the State cannot annul or repeal and which is binding on the State in all its departments and subdivisions; and if on final hearing it is adjudged that the said act of May 17, 1886, is still operative as (to) the law regarding plaintiff's taxation, the plaintiff having tendered full compliance with said law is still ready and willing to pay to the State treasury any balance due thereunder, and to still be bound by its assent to its terms. But if the said act and agreement be not binding on the State, and if it be held to be abrogated by the State, then the plaintiff insists that it is entitled to all its rights under its charter extended as aforesaid, and that it cannot be taxed at a higher rate or in a different method than therein prescribed.

Nevertheless the plaintiff says that the defendants, The City of Frankfort and its tax-collector, James M. Hallnan, are claiming that plaintiff is indebted to the said city in the sums of $3,125 as city taxes for said city as aforesaid for the year 1892, $2,535 as city taxes for said city as aforesaid for the year 1893, $2,260 as city taxes for said city as aforesaid for the year 1894, and $773 as penalty and interest on the said taxes for 1893 and 1894; and the defendant Hallnan, collector of taxes for said city, at the instance and by the direction of said city, is threatening to and is about to levy and sell the plaintiff's property and real estate in the city of Frankfort wherein its said branch is located, and will forthwith make said levy and proceed to sell said property to make the sums aforesaid claimed as taxes due said city, unless restrained by the order of this court, and that such levy and sale would result in putting a stain and cloud
upon the plaintiff's title to its said property and stop the
66 business of its said branch bank, and would produce great
and irreparable injury and mischief to the plaintiff. The said collector of taxes, unless restrained and enjoined, will proceed forthwith to make said levy and advertise and sell said property. The injunction herein prayed for has never been applied for, or refused by any court, judge, or any one else.

Wherefore the plaintiff prays that the defendant-, and each of them, be enjoined from making any levy or destraint on, or selling any property of plaintiff for the said sums, or any of them, or any part of either of them alleged to be due from plaintiff as taxes to the city of Frankfort, or taking any other proceeding or means to collect or recover the same, and that the city of Frankfort be enjoined from assessing or attempting to assess, or from collecting or attempting to collect hereafter any tax upon the plaintiff, or its property or franchise, except upon its real estate used in conducting its business, for the purpose of said city. It prays that the said tax and said charters of said city and the said act of November 11, 1892, be, in their application to plaintiff, adjudged illegal, unconstitutional, and void. It prays for a temporary injunction to restrain the commission of said wrongs during the pendency of this action; that on final hearing said injunction be made perpetual, and that plaintiff be adjudged its costs and all relief, general or special, to which in law or equity it may be entitled.

HUMPHREY & DAVIE,
HELM & BRUCE,
D. W. LINDSEY,
Att'ys for Pl't'ff.

D. W. Lindsey says that he is the president of the Branch Bank of Kentucky, at Frankfort, and the chief officer or agent of the plaintiff corporation now in Franklin county, and that he believes the statements of the foregoing petition are true.

D. W. LINDSEY.

Subscribed and sworn to by D. W. Lindsey, before me this September 6, 1894.

T. N. LINDSEY,
N. P. F. Co., Ky.

The following is the exhibit referred to in the petition, viz:

At a meeting of the board of directors of the Bank of Kentucky, held the 27th day of December, 1887, the following was offered, viz:

It appearing from the report of W. S. Macrae, Frank Miller, and Allen R. Hite, the persons appointed by the board of directors of the president, directors, and company of the Bank of Kentucky, to take and report the votes of the stockholders of said bank, as to paying the tax assessed upon banks and other corporations in this State prescribed in section 1, of article 2, of an act entitled "An act to amend the revenue laws of the Commonwealth of Kentucky," approved May 17, 1886, which has been returned and filed with this bank, that a majority in interest of a quorum of the stockholders of this bank, did at a called meeting of such stockholders, held on the 25th day of June, 1887, at the office of said bank, vote their consent to the levying of said tax, agreement to pay the same, and to
67 waive and release all right under its charter to a different mode or smaller rate of taxation, now, therefore "*Resolved* by the board of directors of the president, directors, and company of the Bank of Kentucky, that the said bank does hereby consent to the levying of the tax prescribed by the first section of the second article of the act before named, and agrees to pay the same as provided by said act and waive and release all right under the charter of said bank to a different mode or smaller rate of taxation; *Resolved*, that these resolutions, consent, waiver, and release be certified under the seal of this corporation, under the hand of the president, and attested by the cashier of the bank, and delivered by the president to the governor of the State of Kentucky."

[SEAL.] THOMAS L. BARRET, *P't.*

E. W. HAYS,
Ass't Cashier.

I certify that the foregoing is a true copy of the original paper of what it purports to be now on file in the office of the auditor of public accounts of the State of Kentucky.

Given under my hand this January 5, 1894.

L. C. NORMAN, *Auditor.*

Franklin Circuit Court.

THE PRESIDENT, DIRECTORS, AND COMPANY OF THE Bank of Kentucky, Plaintiff,
versus
BOARD OF COUNCILMEN OF THE CITY OF FRANKFORT and James N. Hallnan, Collector of Taxes for the City of Frankfort, Defendants.

Order of Injunction.

Upon the application and motion of the plaintiff for an injunction, as prayed in the petition this day, came the plaintiff and the defendants by their respective attorneys, and the defendants entered their appearance to this application and motion and waived any and all notice that might be required, and gave consent that the said application and motion may now be acted upon; and it being made to appear to my satisfaction that the judge of the Franklin circuit court is now absent from Franklin county, and that great and irreparable injury will result to the plaintiff if an injunction be not immediately granted, upon consideration of the petition herein, the clerk of the Franklin circuit court is directed to issue an order of injunction agreeable to the prayer of the petition, enjoining and restraining the defendants, The Board of Councilmen of the City of Frankfort, and James M. Hallnan, collector of taxes for the city of Frankfort, and each of them, from making any levy or destraint, or selling any property of the plaintiff for the sums or any part of them, or any part of either of them alleged to be claimed by the defendant, The Board of Councilmen of the City of Frankfort, to be due it from the plaintiff for taxes for the years 1892, 1893, and 1894, during the pendency of this action, and enjoining said Board of Councilmen of the City of Frankfort
68 from assessing or attempting to assess, or from collecting or attempting to collect, any tax for the purposes of said city upon the plaintiff, its property or franchise, except upon its real estate in said city used in conducting its business during the pendency of this action. But said clerk shall not issue such order of injunction until bond shall have been executed by one or more sufficient sureties of plaintiff to the effect that plaintiff shall pay to the defendants such damages as they may sustain, not exceeding $10,000, if it be finally decided that the order of injunction herein ought not to have been granted.

B. G. WILLIAMS,
Presiding Judge of the Franklin County Court.

September 6, 1894.

Franklin Circuit Court.

THE PRESIDENT, DIRECTORS, AND COMPANY OF the Bank of Kentucky, Plaintiff, *versus* THE BOARD OF COUNCILMEN OF THE CITY OF Frankfort and James M. Hallnan, Collector of Taxes for the City of Frankfort, Defendants.	Injunction Bond.

I undertake and am bound to the defendants, Board of Councilmen of the City of Frankfort and James M. Hallnan, tax collector for the city of Frankfort, to pay to said defendants the damages they may sustain, not exceeding the sum of ($10,000) ten thousand dollars, if it be finally decided that the order of injunction herein ought not to have been granted.

This September 6th, 1894.

E. L. SAMUEL.

Attest: THOS. B. FORD,
Clerk Franklin Circuit Court,
By C. E. JAMES, *D. C.*

Franklin Circuit Court.

THE PRESIDENT, DIRECTORS, AND COMPANY OF the Bank of Kentucky, Plaintiff, *versus* THE BOARD OF COUNCILMEN OF THE CITY OF Frankfort and James M. Hallnan, Collector of Taxes for the City of Frankfort, Defendants.	Order of Injunction.

The defendants, Board of Councilmen of the City of Frankfort and James M. Hallnan, collector of taxes for the city of Frankfort, and each of them, are hereby enjoined and restrained from making any levy or destraints or selling any property of the plaintiff for the sums, or any part of them, or any part of either of them, alleged to be claimed by the defendant Board of Councilmen of the City of Frankfort to be due it from the plaintiff for taxes for the years 1892, 1893, and 1894, or taking any other proceeding or means to collect or recover the same, during the pendency of this action; and the Board of Councilmen of the City of Frankfort is enjoined from 69 assessing or attempting or assess or from collecting or attempting to collect any tax, for the purposes of said city, upon the plaintiff, its property, or franchise, except upon its real estate in said city used in conducting its business, during the pendency of this action and until this case shall have been heard by the chancellor of this court.

This September 6th, 1894.

THOS. B. FORD,
Clerk Franklin Circuit Court,
By C. E. JAMES, *D. C.*

The sheriff's return of summons issued on said petition and upon the order of injunction is as follows:

Executed on the board of councilmen of the city of Frankfort by delivering to Ira Julian, mayor of said city, a true copy of the within, and on James Hallnan, by delivering to him a true copy of the within.

R. D. ARMSTRONG, *S. F. C.*,
By N. SULLIVAN, *D. C.*

September 7, 1894.

On September 10th, 1894, the following order was entered:

Franklin Circuit Court.

THE PRESIDENT, DIRECTORS, AND COMPANY OF THE BANK of Kentucky, Plaintiff,
versus
THE BOARD OF COUNCILMEN OF THE CITY OF FRANKFORT, &c., Defendants.
} Order.

The defendants, The Board of Councilmen of the City of Frankfort, and James Hallnan, tax collector for the city of Frankfort, hereby having entered their appearance to the petition filed in this case on the — day of September, 1894, and consented that this cause be placed upon the docket, same is now placed upon the docket of this court for proceedings as if process had been served ten days before the 1st day of this term. Defendants filed a general demurrer to the petition.

The defendants' demurrer*er*, filed on 10th day of September, 1894, is in words and figures as follows:

Franklin Circuit Court.

THE PRESIDENT, DIRECTORS, AND COMPANY OF THE Bank of Kentucky, Plaintiff,
versus
THE BOARD OF COUNCILMEN OF THE CITY OF FRANKFORT and James Hallnan, Tax Collector for the City of Frankfort, Defendants.
} Demurrer.

The defendants, The Board of Councilmen of the City of Frankfort and James Hallnan, tax collector for the city of Frankfort, say that the plaintiff's petition herein does not state facts sufficient to constitute a cause of action, and demur to said petition.

HUGH RODMAN,
City Attorney.
W. H. JULIAN,
For Defendants.

70 On September 25, 1894, a judgment was entered in this cause, which judgment is in words and figures as follows:

Franklin Circuit Court.

THE PRESIDENT, DIRECTORS, AND COMPANY OF THE
Bank of Kentucky, Plaintiff,
versus
BOARD OF COUNCILMEN OF THE CITY OF FRANKFORT,
&c., Defendants.
} Judgment.

This day came the parties by their attorneys, and this cause having been submitted upon the defendants' demurrer to the plaintiff's petition, and the court being now sufficiently advised, is of the opinion and adjudges that the defendant city had and has had no authority or right to levy, assess, or collect any taxes against the plaintiff for the year 1892, and that for that year the plaintiff properly made its report to the auditor, and paid its taxes into the treasury under the provisions of the Hewitt revenue statute. That for the years 1893 and 1894, the defendant, Hallnan, tax collector for the city of Frankfort or said city, had no power or authority to assess for taxation the intangible property of the plaintiff described in the petition, but that the same was properly assessed for taxation by the State board of assessment and valuation in assessing the franchise of plaintiff as provided for in the act of November 11, 1892.

And that for the delinquency of plaintiff in the payment to the city of Frankfort on so much of the assessments of its franchise for the years 1893 and 1894 as has been apportioned for taxation by said city, the defendants have no power or authority to collect any penalty or interest.

It is therefore adjudged that the defendants' demurrer to the petition be overruled; and they declining to answer but electing to stand by their demurrer, it is further adjudged that the preliminary injunction heretofore granted herein, in so far as the same enjoins the defendants from collecting from the plaintiff any sum for taxes against it for the year 1892 and any sums as penalty or interest for delinquency in payment of taxes on its franchise for the years 1893 and 1894, be and the same is hereby made perpetual, and that so much of said injunction as enjoins the defendants from collecting from the plaintiffs the sum set out in the petition as taxes on franchise for the years 1893 and 1894 be and the same is hereby dissolved.

The defendants except to so much of the foregoing judgment as overrules their demurrer to the plaintiff's petition and perpetuates the injunction herein for any purpose. And the plaintiff excepts to so much of the foregoing judgment as dissolves in part its injunction and as adjudges that plaintiff's intangible property or franchise was assessable by the board of assessment and valuation or otherwise than as contended for in the petition, and prays an appeal to the court of appeals, which is granted; and on motion of the plaintiff so much of the injunction herein as is dissolved by this judgment is hereby continued in force during the pendency of the appeal herein granted upon the plaintiff executing before the clerk
71 of this court by one or more good sureties bond conditioned that the plaintiff will, if this judgment dissolving the injunc-

tion is affirmed, pay to the defendants all damages they or either of them may sustain by reason of the continuance of such injunction pending the appeal.

On Sept. 25, 1894, the following bond was executed:

Franklin Circuit Court.

THE PRESIDENT, DIRECTORS, AND COMPANY OF THE BANK of Kentucky, Plaintiff,
versus
THE BOARD OF COUNCILMEN OF THE CITY OF FRANKFORT and J. M. Hallnan, Tax Collector for the City of Frankfort, Defendants.
} Bond.

Whereas by judgment in the above-styled cause in the Franklin circuit court on the 25th day of September, 1894, the temporary injunction previously granted the plaintiff against the defendants was in part dissolved, and from so much of said judgment as dissolved in part the said injunction an appeal was asked of and granted by said court; and in the order granting said appeal it was ordered that the injunction dissolved should continue in force, pending the appeal, upon the plaintiff executing bond, as in the judgment provided: Now I, E. L. Samuel, surety, hereby covenant to and with the defendants, Board of Councilmen of the City of Frankfort and J. M. Hallnan, tax collector for said city, that the plaintiff will, if the said judgment dissolving the injunction is affirmed, pay to the defendants all damages they or either of them may sustain by reason of the continuance of such injunction, pending the appeal.

E. L. SAMUEL.

STATE OF KENTUCKY,
Franklin County, } *sct:*

I, Thos. B. Ford, clerk of the Franklin circuit court, do hereby certify that the foregoing twenty-seven pages *is* a full and complete and correct copy of the pleadings, exhibits, etc., in the case of The President, Directors, and Company of the Bank of Kentucky against The Board of Councilmen of the City of Frankfort and J. M. Hallnan, tax collector for the city of Frankfort, as appears from the records of my office.

Given under my hand as clerk of said court this — day of October, 1894.

THOMAS B. FORD,
Clerk Franklin Circuit Court.

72 Upon which transcript was endorsed the following statement:

Statement.

The President, Directors, and Company of the Bank of Kentucky, Appellant,
versus
Board of Councilmen of the City of Frankfort and J. M. Hallnan, Tax Collector for the City of Frankfort, Appellees.

The judgment appealed from was rendered on September 25, 1894, and will be found on pages 25 and 26 of this transcript.

The appeal was granted by the court below, and no summons is desired.

D. W. LINDSEY,
Of Counsel for Appellant.

Afterwards, at a court of appeals begun and held for the Commonwealth of Kentucky at the capitol, in the city of Frankfort, on the 2d day of October, A. D. 1894, the following order was entered:

Bank of Kentucky
versus
Board of Councilmen of City of Frankfort, Franklin.

Came the parties by counsel, and on their motion and by consent, it is ordered that this cause be docketed.

The appellant moved to advance this case, together with the case of The Bank of Kentucky against Armstrong, sheriff, and to hear both with the case of Commonwealth *v.* Bank of Kentucky, which was continued for oral argument at the last term of this court, and said motion is submitted.

Afterwards, at a court of appeals held as aforesaid, on October 23, A. D. 1894, the following order was entered:

Bank of Kentucky
versus
Board of Council of Frankfort, Franklin.

Bank of Kentucky
versus
Armstrong, Sheriff, Franklin.

"The court being advised, it is ordered that these causes be advanced and set for hearing with the case of Commonwealth of Kentucky *v.* Bank of Kentucky on the argument docket for the next term of this court."

73 Afterwards, at a court of appeals held as aforesaid, on March 5, A. D. 1895, the following order was entered:

BANK OF KENTUCKY
versus
ARMSTRONG, Sheriff. } Franklin.

SAME
versus
CITY OF FRANKFORT. } Franklin.

* * * * * * *

By agreement of all the parties and on their motion, it is ordered that these seventeen cases be heard together, and said causes coming on to be heard were argued by A. P. Humphrey, for the bank, and Ira Julian, for the Commonwealth, counties, and cities, and laid over until tomorrow for further hearing.

Afterwards, on the 6th day of March, A. D. 1895, the following order was entered herein:

These cases coming on to be heard were argued by D. W. Lindsey, for the banks, W. McD. Shaw and Hugh Rodman, for the counties and cities, and laid over for further hearing on tomorrow.

Afterwards, on March 7, 1895:

These causes again coming on to be heard were argued by Wm. Goebel, for the banks, and H. C. Barker, for the cities and counties, and laid over for further hearing on tomorrow.

Afterwards, on March 8, 1895:

These causes again coming on to be heard were argued by John W. Rodman and T. L. Edelen for the banks and laid over for further hearing on tomorrow.

Afterwards, on March 9, 1895:

These causes again coming on to be heard were argued by James P. Helm for the banks and laid over for further hearing on next Tuesday.

Afterwards, on March 12, 1895, the following order was entered herein:

These causes again coming on to be heard were argued by Wm. J. Hendrick for the Commonwealth, and submitted.

Afterwards, at a court of appeals held, as aforesaid, on the 1st day of June, A. D. 1895, the following judgment was entered:

THE PRESIDENT, DIRECTORS, AND COMPANY OF the Bank of Kentucky, Appellants,
versus
BOARD OF COUNCILMEN OF THE CITY OF FRANKFORT, &c., Appellees. } Appeal from the Franklin Circuit Court.

The court being sufficiently advised, it seems to them the judgment herein is erroneous. It is therefore considered that said judgment be reversed, and cause remanded for further proceedings consistent with the opinion herein, which is ordered to be certified to said court.

It is further considered that the appellants recover of the appellees their cost herein expended.

Judges Lewis, Paynter, and Guffy dissenting.

COMMONWEALTH OF KENTUCKY:

I, Abram Addams, clerk of the Kentucky court of appeals, hereby certify that the foregoing 33 pages (being numbered 1 to 31 inclusive with two interpolated numbers, viz: "page 1 continued" and number 20½) contain a true, full, and complete transcript of the record and proceedings had in said court in the case of The President, Directors, and Company of the Bank of Kentucky, appellants, against The Board of Councilmen of the City of Frankfort, etc., appellees, except the opinions of the court which are copied into the record in case of Bank of Kentucky against City of Frankfort, and except the proceedings upon and the petition for rehearing, as the same appears on file and of record in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of my office. Done at Frankfort, Kentucky, this 10th day of April, A. D. 1897.

ABRAM ADDAMS,
Clerk Kentucky Court of Appeals.

My fee for this transcript, $10.75.

The following is

EXHIBIT 7.

Franklin Circuit Court.

JANUARY 21, 1896.

THE PRESIDENT, DIRECTORS, AND COMPANY OF THE Bank of Kentucky, Plaintiff,
versus
BOARD OF COUNCILMEN OF THE CITY OF FRANKFORT, &c., Defendants.
} Judgment.

This day came the parties by their attorneys, and this cause having been heretofore submitted for a judgment conforming to the opinion and mandate of the court of appeals heretofore filed, reversing the former judgment of this court, and the court being now sufficiently advised: it is adjudged that article 2 of the act of the General Assembly, entitled "An act to amend the revenue laws of the Commonwealth of Kentucky," approved May 17, 1886 (Gen. Stats., chap. 92, art. 2), and the acceptance of the provision thereof by the plaintiff, constituted a contract between the plaintiff and the Commonwealth which the latter cannot alter or change without the consent of the former; by the terms of which contract the plaintiff cannot, during the continuance of its charter, be assessed for taxation or taxed for State purposes or in a different mode or at a greater rate of taxation than as provided for in said act, and can be assessed for taxation and taxed for county and municipal purposes only upon its real estate used by it in conducting its business: That the provisions of the present constitution of this State and of the act of November 11, 1892 (art. 3, chap. 103, Acts 1891–'2–'3), in so far as they were intended to provide for any assessment or taxation of the plaintiff's property, rights of property or franchise, except to assess a tax for county and municipal purposes, its real estate used in conducting its business, are in violation of and repugnant to the Federal Constitution and void: That the board of valuation and assessment provided for in said act of November 11, 1892, had and has no authority in law to assess or value the plaintiff's franchise for taxation, or the auditor to apportion or certify the same or any part of the same for county or municipal taxation: That the temporary injunction which was granted in this cause at the commencement of the action be, and the same is now hereby, made perpetual, and the defendants be, and each of them are, perpetually enjoined and restrained from levying upon or selling any property of the plaintiff for the purpose of collecting any taxes for the city of Frankfort upon the franchise or property of the plaintiff, except taxes upon its real estate used in conducting its business. And it is further adjudged that the plaintiff recover of the defendant its costs in this action expended.

I, Thos. B. Ford, clerk of the Franklin circuit court, certify that the foregoing is a true copy of the judgment in the above-entitled action lately pending in said court.

Witness my hand as clerk of said court this April 5, 1897.

THOS. B. FORD, *C. F. C. C*,
By J. R. ELLIOTT, *D. C.*

76 The following is

EXHIBIT 8.

COMMONWEALTH OF KENTUCKY:

Pleas before the honorable the Kentucky court of appeals, at the capitol, in the city of Frankfort, on the 1st day of June, A. D. 1895, Chief Justice W. S. Pryor, Judges Joseph H. Lewis, James H. Hazelrigg, John R. Grace, Thomas H. Paynter, B. L. D. Guffy, and George B. Eastin sitting.

THE CITY OF LOUISVILLE and R. H. THOMPSON, Judge of the City Court of Louisville, Appellants,
versus
THE PRESIDENT, DIRECTORS, AND COMPANY OF THE BANK OF Kentucky, Appellees.

Be it remembered that heretofore, to wit, on the 27th day of August, 1894, the appellants by their counsel filed in the office of the clerk of the court of appeals a transcript of a record, in words and figures following, to wit:

STATE OF KENTUCKY, }
Jefferson County. }

Pleas before the Honorable Emmet Field, judge of the Jefferson circuit court, common pleas division, at the court-house, in Louisville, Ky., on dates hereinafter mentioned.

Be it known that heretofore, to wit, on the 4th day of May, 1894, came plaintiff by Helm & Bruce, attorneys, and filed its petition in the office of the clerk of the aforesaid court.

Said petition is as follows:

Jefferson Circuit Court.

THE PRESIDENT, DIRECTORS, AND COMPANY of the Bank of Kentucky, Plaintiffs,
versus
R. H. THOMPSON, Judge of the Police Court of the City of Louisville, Defendant.
} No. 4339. Petition.

The plaintiff, The President, Directors, and Company of the Bank of Kentucky, states that it is a corporation duly created by and existing under the laws of the State of Kentucky. It was originally incorporated by an act approved February 22, 1834. By the terms of said act it was created a banking corporation under the name given above, and there *was* conferred upon it the powers usual to such corporations, and it was so to continue a body politic and corporate until the 1st day of October, 1864. By an act entitled "An act to extend the charter of the Bank of Louisville, Bank of Kentucky, and Northern bank," approved February 15, 77 1858, it was provided that the chartered privileges of the plaintiff should continue in full force for twenty years from the 1st day of October, 1864; that the stockholders of said bank should, within one year from the 10th of May, 1858, by a vote of a majority of all the stockholders, given at a stated or called meeting, determine whether they would accept the proposed extension; and each bank accepting the provisions of the said act in the mode aforesaid should notify the governor of the Commonwealth of the acceptance, by the certificate of the president and directors of such bank; and that when notice should be thus given, the said act should be considered in full force and effect as to such bank.

The plaintiff states that its stockholders did, within the said one year from the 10th of May, 1858, by a vote of more than a majority thereof, and given at such meeting as was prescribed by the said act, determine that they would accept the proposed extension, and this plaintiff did notify the governor of the Commonwealth of said acceptance in the manner prescribed by said act.

The plaintiff further states that by an act entitled "An act to amend the charter of the Bank of Kentucky," approved February 1, 1872, it was provided that the charter of the plaintiff be and the same was thereby, extended twenty-five years.

The plaintiff further states that its said corporation was duly organized under the said act creating it as aforesaid, and has ever since been and continues to be a banking corporation duly created under the laws of the State of Kentucky, especially by the said acts and the acts amendatory thereof.

The plaintiff further states that by its said charter aforesaid it was authorized to establish branches; that it has from time to time, under authority of law, established divers branches; and has from time to time, as authorized by law, ceased the operation of the said branches; that under and in pursuance of charter authority it established many years since a branch in the town of Frankfort, State of Kentucky, assigning to it, as it was authorized to do, the sum of $20,000.00 of capital; and the said branch still exists.

By the fifteenth section of said act of February 22, 1834, it was provided:

"That it shall be the duty of the cashier of the principal bank, on the first day of July, 1836, and on the first day of July in each succeeding year during the continuance of this charter, to pay to the treasurer of this Commonwealth twenty-five cents on each one hundred dollars of stock held and paid for in said bank, which shall be in full of all tax or bonus: *Provided*, that the legislature may increase or diminish the same; but at no time shall the tax exceed fifty cents on each one hundred dollars of stock paid for in said bank."

Plaintiff states that, as aforesaid, this bank was promptly organized under and in accordance with this charter and has ever since continued in existence to this time under said charter and the aforesaid acts of extension, exercising the powers, franchises, and privileges therein conferred, and performing all the obligations therein imposed.

By an act approved February 12, 1836, entitled "An act to increase the revenue," the legislature of Kentucky exercised the right reserved in the said 15th section of the charter above quoted, and imposed a tax of fifty cents on each share of the stock of said bank.

78 The plaintiff avers and submits that in said charter, and also in the extensions thereof, the legislative intent is clearly and plainly expressed that the State should have no power to increase the tax on said bank for any purpose whatever beyond the annual rate of fifty cents on each share of one hundred dollars of stock in said bank.

The plaintiff has performed its duties and obligations under its said charter, and the amendments thereto, and has on the first day of July in every year, beginning with the year 1834, paid into the State treasury the tax of twenty-five cents for 1834 and *1834*, and ever since fifty cents on each share of its stock, as required by the charter, up to the year 1886.

The plaintiff states that during most, if not the whole of said time, the said rate of taxation was very much higher upon the said bank than was imposed by the State upon other persons or corporations.

By an act approved May 17, 1886, entitled "An act to amend the revenue laws of the Commonwealth of Kentucky," it was provided that the cashier of all State and national banks should annually, on the 1st day of July of each year, make report of their condition to the auditor, and should pay into the State treasury seventy-five cents on each share of its capital stock, and should in addition pay into said treasury on its surplus, undivided profits and accumulations in excess of ten per centum of its capital stock, a tax at the same rate as the real property should be assessed, and it was distinctly provided by said act that the said taxation should be in full of all tax, State, county, and municipal, except that the real estate or building owned and used by the banks in conducting their business should not be exempted from taxation for county or municipal purposes, but that such real estate alone might be taxed for county and municipal purposes as other real estate is taxed. As a condition to its operation upon any of the banks referred to therein, said act, in the fourth section thereof, provided as follows:

"SECTION 4. That each of said banks, institutions and corporations, by its proper corporate authority, with the consent of a majority in interest of a quorum of its stockholders, at a regular or called meeting thereof, may give its consent to the levying of said tax, and agree to pay the same as herein provided, and to waive and release all right under the act of Congress or under the charters of the State banks to a different mode or a smaller rate of taxation, which consent and agreement to and with the State of Kentucky shall be evidenced by writing under the seal of said bank, and delivered to the governor of the Commonwealth; and upon such agreement and consent being delivered, and in consideration thereof, such bank and its shares of stock shall be exempt from all other taxation whatsoever, so long as said tax should be paid during the corporate existence of the bank."

The consent provided for by this act and the notice to the governor was further required to be given before the meeting of the next General Assembly, provided the tax should be paid by the bank from the passage of the act.

At a meeting of the stockholders of the plaintiff bank, held on
the 25th day of June, 1887, a quorum of the stockholders and a
majority thereof being present, said stockholders and a ma-
79 jority in interest thereof did give their consent to the levy-
ing of said tax, and to the waiver and release of all right
under its charter to a different mode or a smaller rate of taxation,
and said consent of the bank to the waiver and release aforesaid,
and the said agreement was certified in writing under the seal of
the bank by the proper corporate authority to the governor of the
Commonwealth, and delivered to him before the next meeting of
the General Assembly after the passage of said act.

There is filed herewith as part hereof a duly certified copy of such resolution, consent, and agreement. The plaintiff bank also, through its cashier, made its report and paid into the State treasury, on the 1st day of July, 1886, the full tax required by said act, and in conformity with said act has made its reports in proper form to the auditor of public accounts on the 1st day of July in each and every year up to this time, and has until the year 1893 paid to the State treasury, on each 1st day of July in every year from 1886 the full tax required by said act, being seventy-five cents on each share of its capital stock, and a tax at the same rate as real property was assessed by the State upon its surplus, undivided profits, and accumulations in excess of ten per centum of its capital stock. It was only prevented from paying the whole of said tax on the 1st day of July, 1893, by the refusal of the auditor, the fiscal agent of the State, to receive the same. The plaintiff has also, from and including the year 1886 up to and including the year 1893, paid to each of the cities and counties where its principal office and branch is located, the full amount assessed for county and municipal taxation on all the real estate and buildings in which the principal bank and each of its branches conduct their business.

On the 1st day of July, 1893, the plaintiff's cashier did, as he had regularly done for years before, make a written report to the auditor of public accounts, verified by his oath required by law, of the true amount of the capital of the bank and of its surplus, undivided profits and accumulations; and did then and there successively tender and offer to pay into the treasury of the State the sum of $8,225.50, the maximum tax required by its charter to wit, fifty cents for each share of its stock, and also the sum of $16,177.86, the full amount of the tax required and due under the aforesaid act to amend the revenue laws, approved May 17, 1886. Both of said offers and tenders were successively refused and rejected by the said auditor of public accounts, under the claim made by him that both the tax provisions of the plaintiff's charter, and the said act to amend the revenue laws, approved May 17, 1886, had been superseded and repealed by the new constitution of the State of Kentucky, which went into operation on the 28th day of September, 1891, and by the act of the legislature, entitled " An act relating to revenue and taxation," which went into effect on November 11, 1892. The said auditor, as the agent of the State, refused and declined to accept any other sum than the sum of $11,354.12, the amount claimed by him to be due to the State on the franchise of said bank under the provisions of the aforesaid act of November 11, 1892. The plaintiff, protesting against said act as illegal in its application to plaintiff, acceded to the said auditor's demand, and under protest as aforesaid paid into State treasury last-named sum.

80 The plaintiff further states that by an act entitled "An act for the government of cities of the first class," approved July 1, 1893, and which is applicable to the city of Louisville, it was provided among other things, that the general council may, by ordinance, provide for the following licenses to be paid into the sinking fund, with adequate penalties for doing business, for following the calling, occupation, profession, or using or holding or exhibiting the articles herein named without the required license: For each bank, trust, and title company, the license tax shall not be less than four nor more than six per cent. of its gross earnings, exclusive of rent from real estate paying a tax to the city.

In pursuance of the said charter as aforesaid, the general council of the city of Louisville did pass an ordinance, which was approved January 29, 1894, by which it was provided, among other things, that hereafter the following licenses shall be paid into the sinking fund of the city of Louisville: Each bank and trust company shall pay an annual license tax of four per cent. of its gross earnings exclusive of rent from real estate paying taxes in the city of Louisville.

The plaintiff states that the said act granting a charter to cities of the first class, and the said ordinance passed in pursuance thereof, are both *unconstitutional* and *void*, in that they impair the obligation of the contract between the plaintiff and the Commonwealth of Kentucky, as embodied in its charter as aforesaid, and as embodied in its agreement as aforesaid, made under the said revenue law of May 17, 1886, and are a violation of the Constitution of the United States, and especially the section thereof providing that no State shall pass any law impairing the obligation of a contract.

The plaintiff avers and submits that the said act chartering cities of the first class, and the said ordinance as aforesaid, are both unconstitutional and void, as above set forth; that the granting and acceptance of its charter, and the several acts extending and continuing the same, which were accepted and acted upon by said bank, constituted a contract between the State on the one part, and the bank and its stockholders on the other part, continuing during the legal existence of the corporation, and the State never had and has not now the right to repeal or annul said agreement or the rights conferred by said charter, limiting the right of the State to impose a tax on said bank without the consent of said bank.

The plaintiff further states that it did give its consent to said act of May 17, 1886, and did, upon the considerations therein recited, waive and release its right under its charter to a different mode or a smaller rate of taxation than is therein provided. Said consent and waiver was made on the belief that the said act was intended to put in operation a permanent legislative policy governing the taxation of all banks then existing which would accept its provisions, to endure at least during the corporate existence of all said assenting banks. The plaintiff submits that such is the true construction of said act, and that said act and its acceptance constituted a contract which the State cannot annul or repeal, and which is binding on the State in all its departments.

81 Plaintiff states that in view of the action of the State in disregarding its contract and endeavoring to put into effect a system of taxation on all the banks in the State, including plaintiff, much higher and more onerous than that described in the act of May 17, 1886, in that all of said banks, including the plaintiff, are required to pay full municipal taxes in addition to the State taxes, the consideration which induces the plaintiff to consent to be taxed under and in accordance with the terms of said act has wholly failed, and it insists and submits to the court that it is, by the action of the State, restored to its charter right to be discharged from all kinds of taxation by the payment of fifty cents on each share of its capital stock; but if this be not true, still the plaintiff insists and submits to the court that it never at any time consented to be taxed for municipal purposes, except as prescribed in said act

of May 17, 1886, and never at any time waived its objections to a higher rate or more onerous taxation than that imposed by said act of May 17, 1886.

The plaintiff states that it was provided in said ordinances that all licenses should be paid in advance, and in every case where it is based upon a per centum of the earnings, or income of the corporation, the computation shall be made upon the earnings or income of said corporation for the year immediately preceding the time the license is to be dated or is payable; and the corporation to whom the license shall be granted shall, at the end of the year, pay the amount due for the excess over the estimates made at the time of issuing the license under the same penalty as if it had failed or refused to procure a license. And it was further provided that any corporation violating any of the provisions of the said ordinance shall be fined not less than five dollars nor more than one hundred dollars for each offense, each day that the violation is continued to constitute a separate offense.

The plaintiff states that, notwithstanding the premises as aforesaid, the commissioners of the sinking fund of the city of Louisville have demanded of plaintiff that it shall pay to them the sum of $8,063.48; upon its failure to pay have caused a warrant to be issued out of the police court of the city of Louisville, wherein this plaintiff is charged with the offense of conducting a bank without a license, and unless prohibited by this honorable court the defendant, R. H. Thompson, who is judge of the police court of the city of Louisville, will cause this plaintiff to be tried under the said warrant, and will cause the said plaintiff to be fined *not* failing to comply with the said ordinance, and not procuring a license to do business in accordance therewith. The plaintiff further states that as aforesaid the said ordinance is null, void, and of no effect, and the said R. H. Thompson, judge of the police court of the city of Louisville, has no rightful power or authority to enforce the same or to cause this plaintiff to be tried upon the said warrant.

Wherefore plaintiff prays that this court, by a writ of prohibition or order addressed to the police court of the city of Louisville, prohibit it from proceeding in the matter of the warrant sued out in said court against plaintiff for failing to pay said license fee, and that on final hearing it be adjudged that said license ordinance and
said act for the government of cities of the first class in so
82 far as they authorize a tax in any form to be levied against
and collected from the plaintiff be declared unconstitutional
and void, and for all general and proper relief.

HELM & BRUCE,
HUMPHREY & DAVIE,
For Plaintiff.

STATE OF KENTUCKY, } *sct:*
Jefferson County, }

T. L. Barret says that he is president of plaintiff, and that the facts in the above petition are true as he believes.

THOMAS L. BARRET.

Subscribed and sworn to before me by T. L. Barret this May 4, 1894.

J. FISHER, Jr.,
[SEAL.] *Notary Public, Jefferson County, Ky.*

And thereupon the clerk issued summons and copy which is as follows:

Jefferson Circuit Court.

The Commonwealth of Kentucky to the sheriff of Jefferson county, Greeting:

We command you to summon R. H. Thompson, judge of the police court of the city of Louisville, to answer a petition filed against him in our Jefferson circuit court by the President, Directors, and Company of the Bank of Kentucky, and warn him that upon failure so to do for twenty days after service hereof, if in Jefferson county, or for thirty days if elsewhere in the State, judgment may be rendered by default, or answer compelled, or proof taken at petitioner's option; and make due return hereof within sixty days from the date hereof.

Witness, John S. Cain, clerk of said court, this 4th day of May, 1894.

JOHN S. CAIN, *Clerk*,
By E. WHITEHEAD, *D. C.*

The sheriff returned said summons with the following endorsement thereon:

Came to hand May 5, 1894, at 11.00 a. m.

Executed May 8, 1894, on R. H. Thompson, judge police court, by delivering to him a copy of the within summons.

H. A. BELL, *S. J. C.*,
By F. P. CARROLL, *D. S.*

At a court held for the court aforesaid on the 11th day of June, 1894:

By agreement this case is to be heard with case No. 4340, Louisville Banking Co. *v.* R. H. Thompson, judge of the police court of the city of Louisville. And—

By agreement cases set for 19th (day of) June, 1894, for trial.

83 At a court held for the court aforesaid on the 19th day of June, 1894:

Came parties by counsel, and said case being heard, was submitted, and the court not being advised, takes time.

At a court held for the court aforesaid on the 24th day of July, 1894:

The court being sufficiently advised, filed an opinion herein.

Said opinion is as follows:

Jefferson Circuit Court, Common Pleas Division.

BANK OF KENTUCKY, &c.,
versus
R. H. THOMPSON, Judge, &c.

These cases involved the liability of the several plaintiffs to municipal taxation. The Bank of Kentucky represents the class of banks chartered before 1856; the Louisville Banking Co. represents the banks chartered since that date, and the Third national the interests of the national banks of the city.

A bank chartered before 1856 and one whose charter is subsequent to that date were made plaintiffs, because in that year the following general statute became a law:

"All charters and grants of or to corporations, or of amendments there*of*, enacted or granted since the 14th of February, 1856, and all other statutes shall be subject to amendment or repeal at the will of the legislature, unless a contrary inte*rest* be therein plainly expressed: *Provided*, that whilst privileges and franchises so granted may be changed or repealed, no amendment or repeal shall impair other rights previously vested." (Gen. Stats., chap. 68, sec. 8, p. 861.)

Before that act was passed there was no general law giving the legislature control over charters. If the right to amend or repeal was not *reversed* in the charter, it did not exist. But as to charters granted since that date the act quoted becomes a part as fully as if it was incorporated therein, unless a plain intent to exclude it is shown.

The charter of the Bank of Kentucky was approved February 22, 1834; that of the Louisville Banking Company, January, 1867. In the charters of all the banks interested in this litigation it is provided in substance that at no time shall the tax exceed fifty cents on each $100 of stock therein.

In 1886 an act, generally known as the "Hewitt bill," was passed to amend the revenue laws, by which it is provided that all banks in the State shall pay a tax of seventy-five cents upon the $100 of their stock, and certain other taxes for which they were not theretofore liable, but knowing that the rate of taxation could not be increased beyond the limit fixed in their charters, so far as banks created before February, 1856, were concerned, without their consent, the law required of all the banks as follows:

"That each of said banks, institutions, and corporations, by its proper corporate authority, with the consent of a majority in
84 interest of a quorum of its stockholders, at a regular or called meeting thereof, may give its consent to the levying of said tax and agree to pay the same as herein provided, and to waive and release all right under the acts of Congress, or under the charters of the State banks to a different mode or smaller rate of taxation, which consent or agreement to and with the State of Kentucky shall be evidenced by writing under the seal of such bank and delivered to the governor of this Commonwealth; and upon such agreement and consent being delivered, and in consideration thereof, such bank

and its shares of stock shall be exempt from all other taxation whatsoever so long as said tax shall be paid during the corporate existence of such bank.

"SEC. 5. The said banks may take the proceedings authorized by section 4 of this act any time until the next meeting of the next General Assembly: *Provided*, they pay the tax provided in section 1 from the passage of this act.

"SEC. 6. This act shall be subject to the provisions of section eight (8), chapter sixty-eight (68) of the General Statutes."

All of the banks concerned filed their written consent in due time to pay the tax thus provided for.

The present constitution seeks to have all property taxed in proportion to its value.

"All property, whether owned by natural persons or corporations, shall be taxed in proportion to its value, unless exempted by this constitution; and all corporate property shall pay the same rate of taxation paid by individual property. Nothing in this constitution shall be construed to prevent the General Assembly from providing for taxation based on income, licenses, or franchises." (Sec. 176.)

The General Assembly, in the charter for cities of the first class, saw now *proper* to adopt a license tax for banks and certain other monied corporations, whereby each of them is required to pay not less than four nor more than six per cent. of its gross earnings, exclusive of rent from real estate paying a tax to the city. The city council passed an ordinance conforming to the charter requiring each bank to pay an annual license tax of four per cent.

The banks ask in this action for a writ of prohibition against the city to prevent it from enforcing the tax levied by the ordinance, for the reason, mainly, that the "Hewitt bill" constitutes a contract which the State has no right to violate either by constitutional provisions or legislative enactment.

As the law touching all the questions raised by the demurrer of the city has recently undergone a thorough investigation by two distinguished circuit judges who delivered carefully prepared and able opinions, I shall merely state the conclusions to which an attentive consideration of the authorities submitted by counsel has led.

As to the Bank of Kentucky and the banks represented by it there is little room for argument in this court, because in the recent case of The Franklin County Court *v.* Deposit Bank, &c., 87 Ky., 387, the court of appeals decided the identical questions now prevented. The city of Frankfort assessed the corporate property of the Bank of Kentucky for municipal taxation. The bank relied upon its charter to defeat the tax.

85 The court held that the agreement in its charter that it should pay to the State a tax of fifty cents on each of its shares of stock, and that this should be in full of all other tax, constituted a contract which cannot be violated or changed without the consent of the bank.

Referring to the Dartmouth College case, where this principle first obtained prominence, the opinion says:

"This doctrine is so firmly rooted by the decisions of the Supreme Court of the United States, and so uniformly recognized by the courts of last resort of all the States, that a decision by us holding the contrary would be regarded as eminently sporadic."

The Dartmouth College case was decided in 1819, and has been steadily adhered to ever since. The doctrine established by it has sometimes been questioned, but never overthrown.

It would be idle now to theorize whether or not, in view of the mighty changes that have occurred in our social polity during the three-quarters of a century which have elapsed, one legislature should be permitted to make a contract curtailing the sovereign power of taxation by which all succeeding legislatures and law-making bodies are to be bound through all the coming years. The Dartmouth College case is a fact in our jurisprudence, and Mr. Justice Miller realized it when he said, in the opinion in the case of New Jersey *v.* Yard, 95 U. S. 354:

"The writer of this opinion has always believed, and believes now, that one legislature of a State has no power to bargain away the right of any succeeding legislature to levy taxes in as full a manner as the Constitution will permit. But so long as a majority of this court adhere to the contrary doctrine, he must, when the question arises, join with the other judges in considering whether such a contract has been made."

It is true in this State such power has been taken from the legislature by constitutional provision, but contracts of that character heretofore made and not affected by the statute of 1856 are as binding and inviolable as they ever were.

The demurrer to the petition of the Bank of Kentucky will have to be overruled.

Concerning the Louisville Banking Co. and the banks it represents it is sufficient to say, that notwithstanding the definite and formal terms of the contract entered into between them and the State by means of the "Hewitt bill," the legislature which passed that law gave them notice that the right was reserved to any succeeding legislature to amend or repeal it. "This act shall be subject to the provisions of section eight (8) of chapter sixty-eight (68) of the General Statutes."

The fact that the right was reserved by the State to repeal or modify the Hewitt bill and abrogate the contract with the banks under it, presents no valid objection in their behalf.

As long as the law stood unrepealed they were entitled to enjoy all the benefits of their contract, and they were not and could not be taxed except in the manner and to the extent indicated by their written consent; the obligation rested equally upon both parties as long as it lasted.

86 Section 8 of chapter 68 was as much a part of the contract as if it had been embodied in the writing. This question was fully considered in Griffin *v.* Kentucky Ins. Co., 3d Bush, 592, and Clark *v.* Louisville Water Co., 143 U. S., page 1. The demurrer to the petition of the banking Co. will have to be sustained.

The national banks *desire* all their powers from Congress, and their corporate rights cannot be abridged nor in any manner interfered with by a State legislature, but with reference to taxation they occupy the same position that State banks of issue hold; the only limitation placed by Congress upon the power of the State to tax them being that they shall not be discriminated against in this particular. City National Bank of Paducah *v.* City of Paducah, 10 Ky. Law Rep., 506.

The fact that there are banks in the State which, by contracts in their charters made before national banks came into existence, pay a smaller tax than is assessed against national banks and other similar institutions organized since the national banking act became a law can make no difference. All that is required is that as far as the State has the power to control the matter national banks shall not be taxed at a higher rate than it taxes the State banks. In the case of Lionberger *v.* Rowe, 9 Wallace, 468, it is said:

"Congress meant no more by the second limitation in the proviso to the 41st section of the national banking act than to require of each State as a condition to the exercise of the power to tax the shares in national banks, that it should as far as it had the capacity, tax in like manner the shares of banks of issue of its own creation.—Syllabus.

"The measure had reference to prospective legislation by the States, and its object was accomplished when the States conformed as far as practicable their revenue system to it. Exact conformity was required if attainable, but the law-making power did not intend such an absurd thing as that the power of the State to tax should depend on its doing an act which it obliged itself not to do."

As the national banks will be taxed in the same manner and only to the same extent that the State banks organized since February, 1856, will be taxed, it follows that there is no discrimination against them; therefore the demurrer to the petition of the Third national will have to be sustained.

It would be more satisfactory to hold that all the plaintiffs are equally liable, or that none of them is subject to municipal taxation, but the law must be given as it is.

EMMET FIELD, *Judge.*

At a court held for the court aforesaid on the 24th day of July, 1894:

This cause having been heard and submitted on demurrer and the court being advised, it is adjudged that the plaintiff's petition sets forth a good cause of action, and the defendants' demurrer to the said petition is overruled, to which the defendants except; and the defendants in open court declined to answer or plead further
herein; and thereupon the plaintiff moved for judgment, and
87 it is considered by the court that the prayer of the petition
be granted, and that the city of Louisville and R. H. Thompson, judge of the Louisville city court, be and they are hereby prohibited from proceeding further with the warrant against the plaintiff, The Bank of Kentucky in the city of Louisville, or making any further order therein; and it is further considered that the plaintiff

recover of the defendant, The City of Louisville, its costs herein expended, and may have execution therefor. To all of which defendants except and pray an appeal to the court of appeals, which is granted.

STATE OF KENTUCKY,
Jefferson County.

I, John S. Cain, clerk of the Jefferson circuit court, do hereby certify that the foregoing 21 pages contain a full, true, and complete transcript of the record and proceedings had in an action therein pending wherein The President, Directors, and Company of the Bank of Kentucky are plaintiffs, and R. H. Thompson, judge of the police court of the city of Louisville, is defendant, No. 4339, as the same appears of record and on file in my said office.

Witness my hand this 17th day of August, 1894.

JOHN S. CAIN,
Clerk Jefferson Circuit Court.

Upon which transcript was indorsed the following statement:

THE CITY OF LOUISVILLE and R. H. THOMPSON, Judge of the City Court of Louisville, Appellants,
versus
THE PRESIDENT, DIRECTORS, AND COMPANY OF THE BANK OF Kentucky, Appellees.

The judgment appealed from was rendered in Jefferson circuit court, common pleas division, on the 24th of July, 1894, and is on page 21 of this transcript. Appeal prayed below. No process.

H. S. BARKER,
City Attorney, for Appellants.

HUMPHREY & DAVIE,
HELM & BRUCE,
For Appellees.

At a court of appeals held in and for the Commonwealth of Kentucky, at the capitol in the city of Frankfort, on the 9th day of October, A. D. 1894, the following order was made:

CITY OF LOUISVILLE and R. H. THOMPSON, Judge of the City Court of Louisville, Appellants,
versus
THE PRESIDENT, DIRECTORS, AND COMPANY of the Bank of Kentucky, Appellees.

Appeal from the Jefferson Circuit Court, Common Pleas Division.

Ordered that this case be continued for oral argument.

88 Afterwards, at a court of appeals held as aforesaid on March 5, A. D. 1895, the following order was entered:

THE CITY OF LOUISVILLE and R. H. THOMPSON, Judge of the City Court of Louisville, Appellants,
versus
THE PRESIDENT, DIRECTORS, AND COMPANY OF the Bank of Kentucky, Appellees.

Appeal from the Jefferson Circuit Court.

* * * * * * *

By agreement of all the parties, and on their motion, it is ordered that these seventeen cases be heard together, and said causes coming on to be heard were argued by A. P. Humphrey for the banks and Ira Julian for the Commonwealth, counties, and cities, and laid over until tomorrow for further hearing.

Afterwards, on the 6th day of March, A. D. 1895, the following order was entered herein:

These causes coming on to be heard, were argued by D. W. Lindsey for the banks, W. McD. Shaw and Hugh Rodman for the counties and cities, and laid over for further hearing on tomorrow.

Afterwards, on March 7, 1895:

These causes again coming on to be heard, were argued by Wm. Goebel for the banks, and H. C. Barker for the cities and counties, and laid over for further hearing on tomorrow.

Afterwards, on March 8, 1895:

These causes again coming on to be heard, were argued by John W. Rodman and T. L. Edelen for the banks, and laid over for further hearing on tomorrow.

Afterwards, on March 9, 1895:

These causes again coming on to be heard, were argued by James P. Helm for the banks and laid over for further hearing on next Tuesday.

Afterwards, on March 12, 1895, the following order was entered herein:

These causes again coming on to be heard, were argued by Wm. J. Hendrick for the Commonwealth and submitted.

Afterwards at a court of appeals held as aforesaid, on the 1st day of June, A. D. 1895, the following judgment was entered:

THE CITY OF LOUISVILLE and R. H. THOMPSON, Judge of City Court of Louisville, Appellants,
versus
THE PRESIDENT, DIRECTORS, AND COMPANY of the Bank of Kentucky, Appellees.

Appeal from the Jefferson Circuit Court, Common Pleas Division.

The court being sufficiently advised, it seems to them there
89 is no error in the judgment herein. It is therefore considered
that said judgment be affirmed, which is ordered to be certified to said court.

It is further considered that the appellees recover of the appellants their cost herein expended.

Judges Lewis, Paynter, and Guffy dissenting.

COMMONWEALTH OF KENTUCKY :

I, Abram Addams, clerk of the Kentucky court of appeals, hereby certify that the foregoing 26 pages (being numbered 1 to 25, inclusive, with an interpolated number, viz., "page 1, continued"), contain a true, full, and complete transcript of the records and proceedings had in said court in the case of The City of Louisville and R. H. Thompson, judge of the city court of Louisville, appellants, against The President, Directors and Company of the Bank of Kentucky, appellees, as the same appears on file and of record in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of my office.

Done at Frankfort, Kentucky, this 10th day of April, A. D. 1897.

ABRAM ADDAMS,
Clerk Kentucky Court of Appeals.

My fee for this transcript, $9.00.

BANK OF KENTUCKY
v.
STONE and Others.

Upon which bill of complaint there issued the following subpœna in chancery:

The President of the United States of America to Samuel H. Stone, auditor public accounts, Commonwealth of Kentucky; Charles Finley, secretary of state, Commonwealth of Kentucky; George W. Long, treasurer of the Commonwealth of Kentucky; City of Louisville, County of Franklin, Board of Councilmen of City of Frankfort, Greeting:

You are hereby commanded to appear before our circuit court of the United States of America, for the district of Kentucky, at the Federal court hall, in the city of Louisville, on the first Monday in June next, to answer a bill in equity exhibited against you in our said court, by the President, Directors and Company of the Bank of Kentucky, which you shall in nowise omit, under the penalty of the law.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, and the seal of our said circuit court hereto affixed, at the clerk's office of said court, in Louisville, this 17th day of April, A. D. 1897, and in the 121st year of our Independence.

Attest: THOS. SPEED,
C. C. C., K. D.,
By —— ——, *His Deputy.*

90 MEMORANDUM.—The defendants are to enter their appearance in the suit in the clerk's office, on or before the 7th day of June next, the day at which the writ is returnable, otherwise the bill may be taken *pro confesso*.

THOS. SPEED, *Clerk*,
By —— ——, *His Deputy*.

Upon which subpœna the marshal made the following return:

Executed April 24th, 1897, on the City of Louisville, by delivering a copy of the within spa. in ch'y to Geo. D. Todd, mayor of said city.

JAMES BLACKBURN,
United States Marshal,
By R. E. HAINES, *D. M.*

Fees, $2.00.

Executed May the 4th, 1897, on the County of Franklin, by delivering a copy of the within spa. in ch'y to B. G. Williams, county judge; on the City of Frankfort, by delivering a copy of within to Ira Julian, mayor of said city, and on Chas. Finley, secretary of state. Executed on May 14th, on Geo. W. Long, treasurer; executed May 15th, on Samuel H. Stone, auditor of public accounts, by delivering a copy of within spa. in ch'y to each of them.

JAMES BLACKBURN,
United States Marshal,
By P. D. TUCKER, *D. M.*

Fees, $10.00.

And on another day of said term of said court, to wit, on May 27th, 1897, came the complainant, by its counsel, came also the defendant, The City of Louisville, by its counsel, and thereupon the parties, by their counsel, filed their stipulation herein, which is as follows:

In the Circuit Court of the United States for the Sixth Circuit, District of Kentucky.

BANK OF KENTUCKY, Complainant,
versus
SAMUEL H. STONE, &c., Defendants.
No. 6555. Stipulation.

It is stipulated and agreed that the defendant, City of Louisville, may file a demurrer to the complainant's bill, and an answer at the same time, without waiving the demurrer.

HUMPHREY & DAVIE,
Counsel for Complainant.
H. L. STONE,
Counsel for Defendant City of Louisville.

Came again the defendant, The City of Louisville, and filed its demurrer to the bill of complaint herein, which is as follows:

91 In the Circuit Court of the United States for the Sixth Circuit, District of Kentucky.

BANK OF KENTUCKY, Complainant,
versus
SAMUEL H. STONE, &c., Defendants.
} No. 6555. In Equity.

The Demurrer of The City of Louisville, Defendant, to the Bill of Complaint of Bank of Kentucky, Complainant.

This defendant, by protestation, not confessing any or all of the matters and things in the complainant's bill of complaint contained to be true, in such manner and form as the same *is* therein set forth and alleged, demurs to said bill, and for cause of demurrer, states:

1. That the said bill fails to state facts sufficient to show jurisdiction in this court.
2. That the said bill does not contain any matter of equity whereon this court can ground any decree, or give to the complainant any relief against this defendant.

Wherefore, and for divers other good causes of demurrer appearing in the said bill, this defendant does demur thereto, and humbly demands the judgment of this court, whether it shall be compelled to make any further or other answer to the said bill; and prays to be hence dismissed with its costs and charges in this behalf most wrongfully sustained.

H. L. STONE,
City Attorney, Solicitor for Defendant City of Louisville.

I hereby certify, as counsel for the defendant, City of Louisville, in the foregoing demurrer, that in my opinion the same is well founded in point of law, and proper to be filed.

H. L. STONE,
City Attorney, Solicitor for Defendant City of Louisville.

STATE OF KENTUCKY,
Jefferson County,
} *sct:*

Personally appeared before me, John F. Groene, a notary public in and for the county and State aforesaid, George D. Todd, who states that he is mayor and chief officer of the defendant, City of Louisville, and the foregoing demurrer is not interposed for delay of the cause in which it is filed.

GEO. D. TODD.

Subscribed and sworn to before me by said George D. Todd, mayor, this 27th day of May, 1897. My commission expires January 23, 1900.

JOHN F. GROENE,
Notary Public, Jefferson County, Kentucky.

92 Came again the defendant, The City of Louisville, by its counsel, and filed its answer to the bill of complaint herein, which is as follows:

In the Circuit Court of the United States for the Sixth Circuit, District of Kentucky.

BANK OF KENTUCKY, Complainant,
versus } No. 6555. In Equity.
SAMUEL H. STONE, &c., Defendants.

The Answer of The City of Louisville, Defendant, to the Bill of Complaint of Bank of Kentucky, Complainant.

This defendant now and at all times hereafter, saving and reserving unto itself all benefit and advantage of exception, which can or may be had, or taken to the many errors, uncertainties, and other imperfections in the said bill contained, for answer thereunto, or to so much and such parts thereof as this defendant is advised it is material or necessary for it to make answer unto, answering, states — the limit on the rate of taxation to be paid to the State, provided for in section fifteen (15) of complainant's original charter, approved February 2, 1834, and that the same should be in full of all tax and bonus, was an immunity from local taxation, which expired with the complainant's original charter life on October 1, 1864, and the amendments to complainant's original charter, approved subsequent to February 14, 1856, whereby extensions of its charter life, and like immunity from local taxation, were granted unto the complainant for twenty and twenty-five years, respectively, came within the purview of the act of the legislature of the State of Kentucky, approved February 14, 1856, and were by the provisions of the last-named act subject to amendment or repeal at the will of the legislature.

This defendant denies that the tax of fifty cents on each share of stock of the complainant was, when fixed by the act of February 12, 1836, referred to in complainant's bill, or at any time since, largely or at all in excess or as much as the ordinary rate of taxation, State and local, paid by other moneyed capital or property in the State of Kentucky.

This defendant denies that by the settled course of decision of the highest court of the State of Kentucky, the meaning of the provisions in complainant's charter, and the amendments thereto, has been fixed and determined, or that by reason thereof the complainant has an inviolable contract with said State, or that said provisions constitute a limitation on the legislative power of said State to provide for the taxation of plaintiff's property by the municipal subdivisions of said State, or that said provisions prevented such municipal subdivisions from taxing the real estate, or other property of the complainant.

This defendant denies that the complainant has since November 11, 1892, paid in full to this defendant the municipal tax on its real estate and other property.

93 The defendant states section six (6) of article two (2) of said act of May 17, 1886, referred to in complainant's bill,

pertaining to the taxation of banks, expressly provided that said act (meaning article two (2) therein, with respect to the taxation of banks), should be subject to the provisions of section eight (8), chapter sixty-eight (68), of the General Statutes, which was as follows:

"All charters and grants of or to corporations, or amendments thereof, enacted or granted since the 14th of February, 1856, and all other statutes, shall be subject to amendment or repeal at the will of the legislature, unless a contrary intent be therein plainly expressed: *Provided*, that whilst privileges and franchises so granted may be changed or repealed, no amendment or repeal shall impair other rights previously vested."

This defendant states that by said section six (6) of article two (2) of the said act of May 17, 1886, the legislature of the State expressed its intention to reserve, and it did in fact reserve, its power to amend or repeal, at the will of the legislature of the State, said act of May 17, 1886, or any part thereof, including the scheme for taxation of banks and the exemption of banks from county and municipal taxation therein provided for, and a contrary intent was not therein plainly expressed.

This defendant further states that by section five (5), of article twelve (12), of said act of May 17, 1886, all other acts, general and special, and parts of acts inconsistent therewith, or not in conformity therewith, were repealed.

This defendant denies that the ordinance of 1894, providing for a license tax of four per cent. of the gross receipts or earnings of the banks and trust companies in the city of Louisville, in lieu of an *ad valorem* tax, was adopted under the authority of the statute entitled "An act for the government of cities of the first class," approved July 1, 1893, or in pursuance thereof, although it was claimed such authority existed under said act when said ordinance was adopted.

This ordinance was held to be in violation of the State constitution and void by the court of appeals of Kentucky, May 5, 1895, in the cases of Levi, &c., *v.* City of Louisville, 97 Ky. Rep., 394.

This defendant denies that the defendant in the action of the complainant against R. H. Thompson, judge of the police court of the city of Louisville, was in reality the city of Louisville, or that this defendant appeared in said action by counsel, either in the Jefferson circuit court or in the court of appeals of Kentucky; but it is true that the city attorney of this defendant appeared and represented in said action the defendant therein, the said police judge, and also indirectly the commissioners of the sinking fund of the city of Louisville, for whom he was the regularly employed attorney, which was and is a separate and distinct corporation from this defendant, organized and existing under the laws of the State of Kentucky, with power to sue and be sued, contract and be contracted with, and to do and perform all things necessary to execute the duties required and powers given by the act incorporating the same and the amendments
thereto, and to which commissioners of the sinking fund the
94 license tax against banks under the ordinance mentioned in
the complainant's bill was to be paid.

This defendant states the record in said action will show what questions were submitted to the said circuit court and court of appeals, and what were the issues made by the pleadings and decided by each of said courts, as well as what the contentions of each party were before said courts; and this defendant denies all the statements in complainant's bill inconsistent with said record referred to as "Exhibit E" and made part of the complainant's bill.

This defendant denies that the amount of taxes the complainant would have to pay under the assessments of the State board, over and above what it would have to pay under the Hewitt bill, would be as much or more than $20,000 per annum.

This defendant denies that the scheme of taxation provided for in the general revenue law of November 11, 1892, violates the alleged contract, alleged to have been made between the complainant and the State in its charter and the amendments thereto, or violates the alleged contract, alleged to have been made between it and the State under the Hewitt bill; or that there was any irrepealable contract made between the complainant and the State in the complainant's charter and the amendments thereto, or under the Hewitt bill, or that the act of the legislature of Kentucky, of November 11, 1892, instituting such method of taxation, is violative of the Constitution of the United States, or particularly of the clause thereof prohibiting any State from passing a law which shall impair the obligation of a contract, or that said act is void, or that it is violative of the constitution of the State of Kentucky in that, by the said constitution, it is expressly provided that the General Assembly shall not impose taxes for the purposes of any county, city, town, or other municipal corporation, but may by general laws confer on the proper authorities thereof respectively the power to assess and collect such taxes, or, in that the said law of November 11, 1892, provides for an assessment of the capital stock of corporations, among others, banks, by a State board of valuation and assessment, and provides for the certification of such value by the State board to the counties and municipalities where any such capital stock is situated or franchises employed giving said State board the right to apportion the same among the taxing districts and providing that the corporation shall pay to such taxing districts local taxes thereon; or that this defendant has no power to impose any taxes whatever upon the franchise or intangible property of the complainant.

This defendant states that the court of appeals of Kentucky has construed said provision of the constitution of said State, which is section one hundred and eighty-one (181) thereof, as meaning that the General Assembly shall not impose or fix the *amount* or *rate* of taxes for the purposes of any county, city, town, or other municipal corporation, and has further decided, as has the Supreme Court of the United States, that the provisions of said revenue law of November 11, 1892, with respect to the assessment of the franchises or intangible property of corporations, companies, and associ-

95 ations by the State board of valuation and assessment, in the method set forth in the complainant's bill, are not violative of, but in harmony with, the constitution of the State of Kentucky.

This defendant denies that by reason of the complainant's compliance with the provisions of the said Hewitt bill, under an alleged adjudication of the court of appeals for both of the years, or any year mentioned in complainant's bill, it is now inequitable to allow this defendant to collect any taxes from it, even though there may be, subsequent to the date of complainant's alleged payments as aforesaid, a change in the ruling in regard to the law of Kentucky on these subjects.

This defendant denies it has power under the law to harass or vex the complainant in order to coerce any alleged unjust demand or demands, or to throw into confusion complainant's transactions, or to cast a cloud upon its title to its personal property, or to create great or any disturbance or confusion in regard to the indebtedness to it of the various persons, or any person, with whom it has had dealings or to whom it has loaned money.

This defendant denies that it was at the institution of this action, or is now, threatening to collect the said taxes for the years 1893 and 1894, under the valuation of the complainant's capital stock, or intangible property made by the State board of valuation and assessment, or will put into operation against the complainant the provisions of the law authorizing it to make collections, or that it will collect, or attempt to collect, from the complainant the taxes aforesaid, or any taxes held to be unlawful by said decision of the court of appeals of June 1, 1895, affirming the judgment of the Jefferson circuit court in said case of The Bank of Kentucky against R. H. Thompson, judge of the police court of the city of Louisville, or under the revenue law of November 11, 1892, so long as said decision shall be not overruled and remains in full force and effect, or that it has threatened or is threatening to do any illegal act, or act in violation of complainant's alleged contract, or to the great or any detriment of the complainant in its property or franchises, or that complainant has such alleged contract with the State of Kentucky, or that from these alleged threatened wrongs, or any threatened wrong, the complainant has no remedy at the common law, or that its only remedy is by a bill in equity.

This defendant denies it has threatened, or is threatening, the complainant with any wrong or wrongs.

This defendant for further answer and defense to complainant's bill states that the court of appeals of Kentucky, on March 24, 1897, in the case of Deposit Bank of Owensboro *v.* Daviess County, and other bank-tax cases, wherein the same legal questions were involved and issues were made as in the case referred to in the complainant's bill of complaint against R. H. Thompson, judge, etc., rendered a decision in which the former decisions of said court in said case delivered June 1, 1895, and in the cases of Franklin County Court *v.* Deposit Bank of Frankfort, Same *v.* Bank of Kentucky, and other bank-tax cases, decided June 5, 1888, reported

in 87 Ky. Rep., 370, were expressly overruled; and said court furthermore decided that no bank, State or national, trust com-
96 pany, or other similar institution, in the State of Kentucky had
or was entitled to an irrepealable contract with the State under the provisions of the Hewitt bill, or by reason of its acceptance of or compliance with those provisions, and that the same with respect to all said banks and similar institutions in the State were repealed by the State constitution of September 28, 1891, and the general revenue law of November 11, 1892, and all banks were bound and liable to pay State, county, and municipal taxes, and at the same rate as individuals and other corporations; that the legislature of Kentucky reserved in section six (6), article two (2), of said act of May 17, 1886, the power at will to amend or repeal the scheme of bank taxation provided for in said article of said act, which express reservation of power to amend or repeal formed a part of the contract, if any, between the State and the banks, and other similar institutions, which had accepted the provisions of said act and complied therewith; that the repeal of the Hewitt bill with respect to the method and rate of bank taxation by the State constitution and general revenue law of November 11, 1892, did not impair the obligation of any contract with such banks, but that said repeal was only a legitimate exercise of the reserved power in the legislature to amend or repeal; and that the acts of the legislature, adopted subsequent to February 14, 1856, amending the original charters of the four old banks, originally chartered prior to the last-named date, were grants to said corporations and extensions of the period of their charter existence, within the purview of the statute of February 14, 1856, hereinabove referred to as section eight (8), chapter sixty-eight (68), of the General Statutes of the State of Kentucky, and were all subject to amendment or repeal by and at the will of the legislature.

This defendant states that by the concluding section of said revenue law of November 11, 1892, all acts or parts of acts in conflict therewith, including the Hewitt bill, with respect to bank taxation were repealed.

This defendant states that said decision of March 24, 1897, by the rules of said court of appeals does not become final until the expiration of thirty days, excluding Sundays, after the date of its rendition, nor until the expiration of such further time as may be given within said period by said court in which to file a petition for a rehearing, nor until such petition for a rehearing is overruled; and this defendant states that, within said period of thirty days, said court gave further time to counsel representing the banks, which were parties in said cases so decided, to wit: sixty days, excluding Sundays, from March 24, 1897, in which to file petitions for a rehearing, some of which have already been filed, and said period of extension has not yet expired, nor has said decision become final.

This defendant, while disavowing any intention or purpose on its part to collect or attempt to collect municipal taxes from the complainant, or any other bank or trust company in the city of Louisville, held to be unlawful by said decision of the court of ap-

peals of Kentucky of June 1, 1895, so long as said decision is not overruled and remains in full force and effect, it avers that should said decision of said court of March 24, 1897, become final and
97 in full force and effect, it will, in that event, as in duty bound, proceed to collect from the complainant and all other banks and trust companies, municipal taxes in accordance therewith, and as authorized by the laws of the State of Kentucky, but not otherwise.

This defendant states that the complainant has not filed its annual report for the years 1895, 1896, and 1897, with the auditor or State board of valuation and assessment, as required by the revenue law of November 11, 1892.

This defendant denies that should it be determine that the State of Kentucky has the right to retire from said alleged contract with the complainant, the complainant is or would be entitled to be restored by this court, or any court, to its alleged former position.

This defendant denies that the defendants Samuel H. Stone, Charles Finley, and George W. Long, constituting said State board, are now or were at the institution of this action, threatening or, unless restrained by this honorable court, will proceed to value the franchise of the complainant in the manner set forth under the act of November 11, 1892, for the years 1895, 1896, and 1897, or either of them, or to certify such value to the county court clerk of Jefferson county, to be by him certified to the collecting officer of the city of Louisville, or to certify such value to the county court clerk of Franklin county, to be by him certified to the collecting officer of the board of councilmen of the city of Frankfort, and the collecting officer of the county of Franklin, or that such assessments, or either of them, will be illegal or in violation of the complainant's alleged contract, or will cast a cloud over complainant's alleged franchise, or cause a multiplicity of suits, or any suit, to be brought against the complainant, or damage it in a way that cannot be repaired or estimated at common law, or that from these alleged threatened wrongs the complainant has no remedy at the common law, or that its only remedy is by a bill in equity; or that unless restrained by this honorable court this defendant, or the defendants, The County of Franklin and The Board of Councilmen of the City of Frankfort, or either of them, will attempt to levy or collect taxes based upon the apportionment found by said State board of valuation and assessment, or will subject complainant to the harassment of many suits, or any suit, or cast a cloud upon its franchises and property, or that an effort will be made to enforce penalties, or any penalty, against the complainant; and this defendant denies that this defendant, or either of its codefendants herein, will undertake to collect any taxes from the complainant held to be unlawful by said decision of the court of appeals of Kentucky of June 1, 1895, so long as said decision is not overruled by said court and remains in full force and effect.

This defendant, therefore, submits that the complainant was not at the institution of this action, and is not now, being subjected to any false or illegal claim or claims, nor to any suit or suits, nor will it

suffer any irreparable injury, unless an injunction *pendente lite* be granted herein commanding this defendant, its officers and agents, to refrain from endeavoring by distraint, suit, or otherwise, from collecting or attempting to collect any of the taxes on assessments heretofore certified to it, based on the alleged illegal assessment
98 of the franchise of the complainant, until the further order and determination of this court.

This defendant denies that the complainant is entitled to any injunction whatever, or to any other equitable relief in this court.

Wherefore, having answered, this defendant prays that the complainant's bill be dismissed, with judgment for its costs, and for all other relief to which it in equity may appear to be entitled.

H. L. STONE,
City Attorney, Solicitor for Defendant City of Louisville.

STATE OF KENTUCKY, } *sct*:
Jefferson County, }

Personally appeared before me, John F. Groene, a notary public in and for the county and State aforesaid, the affiant, George D. Todd, who states he is the mayor and chief officer of the defendant, City of Louisville, and the facts stated in the foregoing answer so far as stated from his personal knowledge are true, and so far as stated from information, he believes the same to be true.

GEO. D. TODD.

Subscribed and sworn to before me by said George D. Todd, mayor, this 27th day of May, 1897. My commission expires January 23, 1900.

JNO. F. GROENE,
Notary Public, Jefferson Co., Ky.

And on another day of said term of court, to wit, on May 28, 1897, came the complainants, etc.

Circuit Court of the United States for the Sixth Circuit, District of Kentucky, at Louisville, Kentucky.

PRESIDENT, DIRECTORS, AND COMPANY OF THE BANK OF KENTUCKY, Complainant,
versus
SAMUEL H. STONE, &c., Defendant-.

PRESIDENT, DIRECTORS, AND COMPANY OF THE BANK OF LOUISVILLE, Complainant,
versus
SAMUEL H. STONE, &c., Defendant-.

WESTERN BANK, Complainant,
versus
SAMUEL H. STONE, &c., Defendant-.

Louisville Banking Company, Complainant,
versus
Samuel H. Stone, &c., Defendants.

Union National Bank, Complainant,
versus
Samuel H. Stone, &c., Defendants.

99 Louisville City National Bank, Complainant,
versus
Samuel H. Stone, &c., Defendants.

Bank of Commerce, Complainant,
versus
Samuel H. Stone, &c., Defendants.

American National Bank, Complainant,
versus
Samuel H. Stone, &c., Defendants.

Farmers' & Drovers' Bank, Complainant,
versus
Samuel H. Stone, &c., Defendants.

Third National Bank, Complainant,
versus
Samuel H. Stone, &c., Defendants.

First National Bank, Complainant,
versus
Samuel H. Stone, &c., Defendants.

Citizens' National Bank, Complainant,
versus
Samuel H. Stone, &c., Defendants.

German Security Bank, Complainant,
versus
Samuel H. Stone, &c., Defendants.

Fidelity Trust & Safety Co., Complainant,
versus
Samuel H. Stone, &c., Defendants.

Louisville Trust Co., Complainant,
versus
Samuel H. Stone, &c., Defendants.

This day came the complainants in each of the above-entitled causes, and filed herein notice of motion to be entered herein this day. And thereupon came the complainants, The Bank of Kentucky and The Bank of Louisville, by Humphrey & Davie, counsel, and the complainants in all the other causes, by Helm & Bruce, counsel, and moved the court to enter an order herein enjoining and restraining the defendants, Samuel H. Stone, George W. Long, and Charles Finley, composing the board of valuation and assessment, from valuing or certifying the value of the intangible property and franchises of the complainants under the act of November 11, 1892, until the further order of the court herein, and enjoining and restraining the other defendants herein, to wit: The City of Louisville, The County of Franklin, and The Board of Councilmen of the City of Frankfort, from endeavoring to collect any taxes under such certification until the further order of the court.

100 And at the same time the City of Louisville, appearing herein by H. L. Stone, city attorney, and the County of Franklin, appearing herein by Ira Julian and J. H. Polsgrove, and the Board of Councilmen of Frankfort, appearing herein by Ira Julian, objected to the said motion, and the same was argued and submitted, and the court, not being advised, takes time.

And at the same time came the Board of Councilmen of the City of Frankfort and the County of Franklin, by the said Ira Julian and J. H. Polsgrove, and filed herein a demurrer to the bill of complaint of the Bank of Kentucky to the jurisdiction of the court, and also a general demurrer, and by consent and without waiving the effect of the said demurrers, filed answers of the said Board of Councilmen of the City of Frankfort and the County of Franklin to the said bill of complaint.

And also came the said Samuel H. Stone, George W. Long, and Charles Finley, by W. S. Taylor, attorney general, and filed herein their several demurrers to the said bills of complaint. And the said cause having been argued by counsel upon the said general and special demurrers, as well as upon the demurrer of the City of Louisville, was submitted, and the court, not being advised, takes time.

May 28, 1897.

WM. H. TAFT,
Circuit Judge.

The notices above referred to are as follows:

Circuit Court of the United States, Sixth Circuit, District of Kentucky.

PRESIDENT, DIRECTORS, AND COMPANY, BANK OF KENTUCKY, Complainants,
versus
SAMUEL H. STONE, &c., Defendants.

The defendants, The City of Frankfort and The County of Franklin, will take notice that the complainant- in the above-entitled cause will, on Friday, May 28, 1897, at the Federal court room in Nashville, Tennessee, about the hour of 10 a. m., or when the court shall convene, move the court to grant an interlocutory injunction against you from proceeding to collect any taxes upon any valuation by the board of valuation and assessment, for the years mentioned in the bill of complaint; said injunction to restrain you pending this suit and until a final decree can be had; and to be in such terms as the court may direct.

HUMPHREY & DAVIE,
Counsel for Complainants.

Upon which notice there appears the following return:

I am over sixteen years of age and not a party to, nor interested in, the within action. I served this notice on B. G. Williams, judge of the county court of Franklin county, on May 11, 1897, at 10.30 a. m., by delivering a true copy thereof to him; Ira Julian, mayor of the city of Frankfort, being out of the county, I served this notice on W. H. Snead, city attorney; B. C. Milam, mayor *pro tem.*,
101 and W. H. Julian, a white male person over sixteen years of age, a brother to said Ira Julian and located at same place, by delivering to each of them a true copy of the within notice, May 11, 1897.

HUSTON QUIN.

Subscribed and sworn to by Huston Quin, before me this 12th day of May, 1897.

ARTHUR PETER,
Notary Public, Jefferson County, Ky.

Commission expires January 15, 1898.

Circuit Court of the United States, Sixth Circuit, District of Kentucky.

President, Directors, and Company, Bank of Kentucky, Complainants,
versus
Samuel H. Stone, &c., Defendants.

President, Directors, and Company, Bank of Louisville, Complainants,
versus
Samuel H. Stone, &c., Defendants.

President, Directors, and Company, Northern Bank of Kentucky, Complainants,
versus
Samuel H. Stone, &c., Defendants.

The defendants, Samuel H. Stone, Charles Finley, G. W. Long, will take notice that the complainant in each of the above-entitled causes will, on Friday, May 28, 1897, at the Federal court room in Nashville, Tennessee, about the hour of 10 a. m., or when the court shall convene, move the court in each of said causes to grant an interlocutory injunction against you from proceeding to value the property of the complainant for taxation, or to certify the same to the municipalities mentioned in the several bills of complaint for the years mentioned in said several bills of complaint;

said injunction to restrain you pending this suit, and until a final decree can be had.

J. D. HUNT,
HUMPHREY & DAVIE,
Counsel for Complainants.

Upon which notice there appears the following return:

I am over 16 years of age, and not a party to nor interested in the within actions, or any of them. I served this notice on H. E. James, assistant treasurer, May 11, 1897, at 9.50 a. m.; on E. D. Guffy, assistant secretary of state, May 11, 1897, at 9.55 a. m., and on F. H. Johnson, assistant auditor, May 11, 1897, at 10.05 a. m., by delivering a true copy thereof to each of them—Samuel H. Stone,
George W. Long, and Charles Finley, being respectively
102 auditor, treasurer, and secretary of state of the Common-
wealth of Kentucky, all being out of the State.

HUSTON QUIN.

Subscribed and sworn to by Huston Quin before me this 12th day of May, 1897.

ARTHUR PETER,
Notary Public, Jefferson Co., Ky.

Commission expires January 15, 1898.

The demurrer of the Board of Councilmen of the City of Frankfort and County of Franklin above referred to is as follows:

Circuit Court of the United States for the Sixth Circuit and District of Kentucky.

THE PRESIDENT, DIRECTORS, AND COMPANY OF THE Bank of Kentucky
against
SAMUEL H. STONE, BOARD OF COUNCILMEN OF THE City of Frankfort, County of Franklin, and Others.
} In Equity.

The demurrer of the above-named Board of Councilmen of the City of Frankfort and County of Franklin, defendants, to the bill of complaint of the above-named The President, Directors, and Company of the Bank of Kentucky, complainant.

These defendants, by protestation, not confessing or acknowledging all or any of the matters or things in the said bill of complaint contained to be true in such manner and form as the same are therein set forth and alleged, doth demur to the said bill. And for cause of demurrer showeth:

That it appeareth by the complainant's own showing by the said bill, that it is not entitled to the relief prayed for by the bill against these defendants.

Wherefore, and for divers other good causes of demurrer appearing on the said bill, these defendants doth demur thereto; and pray the judgment of this honorable court, whether or not they shall be compelled to make any answer to the said bill, and they humbly pray to be hence dismissed with their reasonable cost in this behalf sustained.

JAS. H. POLSGROVE,
County Attorney, Franklin Co.
IRA AND W. H. JULIAN,
For Defendants Board of Councilmen of the City of Frankfort and Franklin County.

The plea of the Board of Councilmen of the City of Frankfort and County of Franklin above referred to is as follows:

103 Circuit Court of the United States for the Sixth Circuit and District of Kentucky.

THE PRESIDENT, DIRECTORS, AND COMPANY OF THE Bank of Kentucky
against
SAMUEL H. STONE, THE BOARD OF COUNCILMEN OF the City of Frankfort, The County of Franklin, and Others.
In Equity.

The plea of the above-named Board of Councilmen of the City of Frankfort and County of Franklin, defendants, to the bill of complaint of the above-named President, Directors, and Company of the Bank of Kentucky, complainant.

These defendants (Board of Councilmen of the City of Frankfort and Franklin County), by protestation, not confessing or acknowledging all or any of the matters or things in the said bill of complaint to be true in such manner and form as the same are therein set forth and alleged — in all the said bill; and humbly crave the judgment of this honorable court whether or not they ought to be compelled to make any further or other answer to the said bill.

JAS. H. POLSGROVE,
County Attorney, Franklin County.
IRA & W. H. JULIAN,
For Defendants Board of Councilmen of the City of Frankfort and Franklin County.

Sworn to and subscribed before me May 28, 1897.

H. M. DOAK, *Clerk.*

Personally appeared before me, H. M. Doak, clerk of the circuit court of the United States in and for the middle district of Tennessee, Ira Julian, mayor city of Frankfort, Ky., with whom I am personally acquainted, and made oath that the matters and things stated in the foregoing plea are true, where they are stated as of his own knowledge, and where they are stated on information or belief he verily believes them to be true.

IRA JULIAN,
Mayor of City of Frankfort, Ky.

Sworn to and subscribed before me this the 28th day of May, A. D. 1897.

H. M. DOAK, *Clerk.*

I hereby certify that the foregoing plea, in my opinion, is well founded in point of law.

IRA JULIAN,
Of Counsel for Defendants.

104 The answer of the Board of Councilmen of the City of Frankfort and County of Franklin above referred to is as follows:

Circuit Court of the United States for the Sixth Circuit and District of Kentucky.

THE PRESIDENT, DIRECTORS, AND COMPANY OF THE Bank of Kentucky *against* SAMUEL H. STONE, CHARLES FINLEY, G. W. LONG, City of Louisville, County of Franklin, and Board of Councilmen of the City of Frankfort.	In Equity.

Answer of the above-named Board of Councilmen of the City of Frankfort and County of Franklin, defendants, to the bill of complaint of the above-named President, Directors, and Company of the Bank of Kentucky.

In answer to the said bill, without waiving demurrer to the jurisdiction or the general demurrer to the bill, but reiterating and relying upon the same, the Board of Councilmen of the City of Frankfort and the County of Franklin say as follows:

The allegations of the first to the sixteenth paragraphs, inclusive, of the bill are substantially true, except the conclusions of law and of fact therein contained.

Responding to the said sixteen paragraphs, these defendants allege as follows: Neither of the renewing acts of 1858 and 1872, mentioned in the bill, contains any express limitation upon the taxing power of the State. On the contrary, the renewing act of 1872 provides: "Sec. 5. That the charter of the Bank of Kentucky be extended for twenty-five years. Sec. 6. The president, directors, and company of said bank shall have all the rights, privileges, and franchises granted to *other banks* of Kentucky." 'Tis under and by virtue of this renewing act that the Bank of Kentucky now exists, and has existed ever since 1884. Hence, the charter of said bank is not, and has not been since 1858, an irrevocable contract.

XVII.

As to the XVII paragraph of said bill, these defendants deny that it has been fully or finally or at all adjudicated that complainant is protected by contract from local taxation. These defendants deny that it has been fully or finally or at all adjudicated that complainant may, in any event, be restored to taxation as provided in its charter These defendants deny that the legislature ever granted to complainant or entered into with complainant any irrevocable contract of exemption from taxation; as fully appears from the language of complainant's present charter and of article two (2) of the Hewitt act, and the House and Senate Journals of 1886, which journals are here referred to as part hereof—House Journal pages 1241 and 1295, 105 and Senate Journal page 1315. These defendants deny every allegation of the said XVII paragraph. There has never been but one decision of the Kentucky court of appeals to the effect that article two (2) of the Hewitt act constituted an irrevocable contract. That was rendered on June the 1st, 1895, by a divided court, in the consolidated cases referred to and exhibited in the bill herein. The two cases of complainant against these defendants, which arose under the Hewit- act, and which are set forth in the bill as separate adjudications, were included in the said consolidated cases and were all decided by the court of appeals at the same time in one opinion, the said opinion rendered on June the 1st, 1895. In those cases, Judge Pryor delivered the opinion. Three (3) of the seven appellate judges concurred with him therein, and three (3) of the said judges dissented therefrom in an elaborate dissenting opinion. The petition for rehearing in those cases was overruled on October the 8th, 1895. The time for an appeal therefrom has not yet expired, and may yet be prosecuted. In the trial of same, these defendants relied upon the Constitution of the United States. The matter of said appeal has heretofore been in abeyance, awaiting decision in other cases. When said petition for rehearing was overruled on October the 8th, 1895, there were left pending in the said court of appeals other cases, from the city of Owensboro and elsewhere, which involves the same questions as the said consolidated cases decided, as above stated, by the divided court. The said remaining cases having been heard and maturely considered on March the 24th, 1897, in the case Deposit Bank of Owensboro *v.* Daviess County, and other cases consolidated therewith, the said opinion rendered on June the 1st, 1895 (upon which alone the complainant herein relies) was entirely overruled and abrogated by the court of appeals of Kentucky. Said opinion rendered on March the 24th, 1897, *holds:* That complainant is not and was never under its present charter protected by contract from local taxation—that neither its charter nor article 2 of the Hewitt act constitutes an irrevocable contract between the bank and the State—that article two of the Hewitt act, having expressly provided in the sixth section thereof, that it should be subject to alteration, amendment or repeal, the same was so subject, and was repealed by the State constitution of 1891 and the revenue law of 1892; and that said repeal does not impair the obligation of any contract, nor restore complainant to any contract right of exemption under its charter. Said opinion is here referred to as part hereof. Certified copies of the records of the cases in which this (the said) opinion was rendered will be filed herewith as part hereof, if required. A petition for rehearing in the said last-named cases is now pending, but same will probably be passed upon

before June the 20th, next. When that petition has been passed upon, these defendants will ask permission of this court to file herein a supplement to this answer, setting forth the ruling of the court of appeals upon said petition. Further answering, these defendants say that the two judgments (set forth in the bill) entered in the Franklin circuit court, under said overruled opinion, in the cases of complainant against these defendants, are erroneous and
not in accordance with the mandate of the court of appeals
106 therein, and void in so far as the same may apply to the
taxes in controversy herein. None of the taxes now in controversy were involved in those two cases.

XVIII.

If complainant was, by repeal of the Hewitt act, "restored to its former position under its charter," the Bank of Kentucky was and is, nevertheless, subject to legislative control by virtue of the general act of February the 14th, 1856, relative to the repeal and amendment of charters.

XIX.

These defendants deny that Samuel H. Stone, Charles Finley, and George W. Long are threatening to or will value the franchise of complainant, or are threatening to or will certify the valuation of said franchise to any county clerk, otherwise than in accordance with the revenue act of November the 11th, 1892 (cited in the bill herein), as construed by the court of last resort of the State. These defendants deny that such valuation and certification would be illegal or violative of any contract between complainant and the State, or would cast a cloud over complainant's franchise, or would cause a multiplicity of suits to be brought against complainant, or would damage complainant in a way that could not be repaired or estimated at common law. These defendants deny that complainant has no remedy at law for the wrongs complained of. Under the laws of Kentucky complainant may pay the taxes in controversy, under protest, and afterwards in a single suit at law have its rights adjudicated and enforced. These defendants allege that each of these defendants is solvent and amply able to reimburse complainant for any loss it may, in any event, sustain by reason of the wrongs alleged in the bill. These defendants deny that they or either of them will collect or attempt to collect of complainant any tax otherwise than in accordance with the said revenue law of 1892, as construed by the court of last resort of the State, or will subject complainant to the harassment of many suits, or will cast a cloud upon its franchise or property, or will attempt to enforce any penalties against complainant otherwise than as provided by law.

XX.

These defendants allege that to grant the injunction prayed for would be (in effect) to enjoin the State of Kentucky, through her officers, from executing the State constitution and the present revenue law of the State as construed by the court of last resort of the State. These defendants allege that to grant the injunction prayed for would be (in effect and in fact) to enjoin all proceedings in the State courts for collection of the taxes in controversy, contrary to section 720 of the Revised Statutes of the United States. The laws of Kentucky authorize the collection of taxes by suit in the circuit and county courts of the State. There is now pending in the Franklin circuit court at Frankfort, Kentucky, a suit by 107 these defendants against complainant and others for mandamus to compel the State board of assessments to value and apportion complainant's franchise, and the auditor (Samuel H. Stone) to certify the valuation and apportionment thereof to the county clerk of Franklin county, in order to — collection of the taxes now in controversy herein between these defendants and the complainant.

These defendants submit that there is no equity in the bill; that the injunction prayed for ought not to be granted, and that this court will not exercise jurisdiction of the cause, and pray that the said bill be dismissed with costs.

IRA JULIAN &
W. H. JULIAN,
Attorneys for City of Frankfort, Ky.

Sworn to and subscribed before me May 28, 1897.

H. M. DOAK, *Clerk.*
W. H. SNEED,
City Attorney for the City of Frankfort.
IRA & W. H. JULIAN,
Assistant Counsel.

Personally appeared before me, H. M. Doak, clerk of the circuit court of the United States in and for the middle district of Tennessee, Ira Julian, mayor of city of Frankfort, Ky., with whom I am personally acquainted, and made oath that the matters and things stated in the foregoing answer are true, where they are stated as of his own knowledge, and where they are stated on information or belief, he verily believes them to be true.

IRA JULIAN,
Mayor of the City of Frankfort, Ky.

Sworn to and subscribed before me this the 28th day of May, A. D. 1897.

H. M. DOAK, *Clerk.*

The demurrer of the defendant, Samuel H. Stone, auditor, and others above referred to is as follows:

In the Circuit Court of the United States for the Sixth Circuit, District of Kentucky.

BANK OF KENTUCKY, Complainant,
versus } No. 6555.
SAMUEL H. STONE, &c., Defendants.

The demurrer of the defendants, Samuel H. Stone, auditor; Charles Finley, secretary of state, and George W. Long, treasurer of the State of Kentucky, to the bill of complaint of Bank of Kentucky, complainant.

108 These defendants, by protestation, not confessing any or all of the matters and things in the complainant's bill of complaint contained, to be true in such manner and form as the same is therein set forth and alleged, demur to said bill and for cause of demurrer state:

1. That the said bill fails to state facts sufficient to show jurisdiction in this court.
2. That the said bill does not contain any matter of equity whereon this court can ground any decree or give to the complainant any relief against these defendants.

Wherefore, and for divers other good causes of demurrer appearing in the said bill, these defendants do demur thereto and humbly demand the judgment of this court whether they shall be compelled to make any further or other answer to the said bill, and pray to be hence dismissed with their costs and charges in this behalf most wrongfully sustained.

W. S. TAYLOR,
Attorney General of the State of Kentucky.

I hereby certify, as counsel for the defendants, Samuel H. Stone, auditor, Charles Finley, secretary of state, and George W. Long, treasurer of the State of Kentucky in the foregoing demurrer, that, in my opinion, the same is well founded in point of law and proper to be filed.

W. S. TAYLOR,
Attorney General of the State of Kentucky.

109 The following is

EXHIBIT 9.

Filed November 13, 1895.

Franklin Circuit Court.

THE BOARD OF COUNCILMEN OF THE CITY of Frankfort, Plaintiff,

versus

L. C. NORMAN, Auditor; J. W. HEADLEY, Secretary State; H. S. Hale, State Treasurer; President, Directors, and Company of the Bank of Kentucky, Deposit Bank of Frankfort and Farmers' Bank of Kentucky, and State National Bank, Defendants.

Petition in Equity.

The plaintiff, The Board of Councilmen of the City of Frankfort, states:

Defendant, L. C. Norman, is, and has been for more than one year last past, the duly elected, qualified, and acting auditor of the State of Kentucky.

Defendant, J. W. Headley, is, and has been for more than one year last past, the duly elected, qualified, and acting secretary of state of the State of Kentucky.

Defendant, H. S. Hale, is, and has been for more than one year last past, the duly elected, qualified and acting treasurer of the State of Kentucky.

Defendant, President, Directors, and Company of the Bank of Kentucky, is a corporation, created and doing a banking business under and by virtue of the laws of Kentucky. Same was originally chartered by the legislature in 1835. The original charter thereof has been several times renewed and amended. Said corporation is now, and has been for more than three years last past, conducting a banking business (of loan and discount, etc.) in the city of Frankfort, and also in the city of Louisville.

Defendant, Farmers' Bank of Kentucky, is a corporation created, and doing a banking business under and by virtue of the laws of Kentucky. Same was originally chartered by the legislature in 1850. The original charter thereof has been several times renewed and amended. Said bank is now and has been for more than three years last past, conducting a banking business (of loan and discount, etc.) in the city of Frankfort, and also in Georgetown and elsewhere.

Defendant, Deposit Bank of Frankfort, is a corporation created and doing a banking (*business*) under and by virtue of the laws of Kentucky. Same was originally chartered by the legislature in 1863. The original charter thereof has been several times renewed and amended. Said bank is now and has been for more than three years last past, conducting a banking business (of loan, discount, etc.) in the city of Frankfort and not elsewhere.

110 Defendant, State National Bank, is a corporation created and doing a banking business under and by virtue of the laws of the United States. Same was originally incorporated about the year 1890, and not later than January 1, 1891. Said bank is now and has been for more than three years last past, conducting a banking business (of loan, discount, etc.) in the city of Frankfort and not elsewhere.

All of said original charters and renewals and amendments thereof, are hereby made a part of this petition.

Each of the defendant corporations (banks) during the present year, 1895, and on or before the 1st day of March thereof, made and delivered to the defendant auditor, the statement (report) required by section 4092 of the Kentucky Statutes, verified, as required by said section, and showing the following facts:

Name and place of business of the corporation; the kind of business engaged in; the amount of capital stock, preferred and common; the number of shares of each; the amount of stock paid up; the par and real value thereof; the highest price at which such stock was sold at a *bona fide* sale within twelve months next before the 31st day of December, 1894; the amount of surplus fund and undivided profits, and the value of all the other assets; the total amount of indebtedness as principal, the amount of gross or net earnings or income, including interest on investments, and incomes from all other sources for twelve months next preceding the 31st day of December, 1894; the amount and kind of tangible property in the State, and where situated, assessed or liable to assessment in this State, and the fair cash value thereof, estimated at the price it would bring at a fair voluntary sale, and such other facts as the auditor required.

Said statement (report) was made up to and including the 31st day of December, 1894.

After said statement had been made, and prior to July 1, 1895, the defendants, auditor, treasurer, and secretary of state, from said statement and such other evidence as they had, ascertained and fixed the value of the *franchise* of each of said corporations (banks) for taxation under levies of 1895. The value of the franchise of each of said banks, thus ascertained and fixed, is as follows:

Value of Franchise.

President, Directors, and Company of the Bank of Kentucky	$2,709,384 66
Farmers' Bank of Kentucky	1,153,574 14
Deposit Bank of Frankfort	116,015 80
State national bank	185,468 14

Yet defendant auditor has not certified to the county clerk of Franklin county either of the said assessments, nor the amount thereof liable for county, city, town, or district tax, as required by section 4084 of the Kentucky Statutes, nor anything in regard thereto.

The defendants, auditor, treasurer, and secretary of state, act-

ing as a board of valuation and assessment, have not apportioned
the said values of the franchises of the President, Directors,
111 and Company of the Bank of Kentucky and Farmers' bank,
nor either of them, among the localities in which the same
are subject to taxation, as required by section 4077 of Kentucky Statutes, and have not made an apportionment of the said valuations, nor either of them, for the purpose of local taxation, or any purpose.

The said franchises of the Deposit bank and State national bank are liable to local taxation in the city of Frankfort and not elsewhere.

A portion of each of the said franchises of the President, Directors, and Company of the Bank of Kentucky and Farmers' bank, is liable to local taxation in the city of Frankfort, and not elsewhere. The said portions so subject are approximately as follows:

President, Directors, and Company of Bank of Kentucky	$190,000 00
Farmers' bank	503,400 00

That being the apportionment by said board for the year 1894.

The city *ad valorem* levy of the city of Frankfort for the year 1895 is $1.40 per $100 valuation, and the city of Frankfort is entitled to *ad valorem* taxes from each of said banks under said levy for 1895, as follows:

President, Directors, and Company of the Bank of Kentucky	$2,660 00
Farmers' Bank of Kentucky	7,353 60
Deposit bank	1,624 21
State national bank	2,616 55

No tax has been paid the city of Frankfort under said levy of 1895, by either of defendant banks, and the city of Frankfort is entitled to recover same from each of — banks respectively.

Wherefore the plaintiff, Board of Councilmen of the City of Frankfort, pray- that the defendants, auditor, treasurer, and secretary *and secretary* of state, be directed and ordered by this court to make the said apportionment of the said franchises of the President, Directors, and Company of the Bank of Kentucky and Farmers' bank, among the localities in which the same is liable to local taxation, and that the defendant auditor be directed and ordered to certify the said assessment and apportionments liable to taxation in the city of Frankfort to the county clerk of Franklin county. Plaintiff prays for its costs and all proper relief.

HUGH RODMAN,
City Attorney.
W. H. JULIAN,
For Plaintiff.

Affiant, mayor of the city of Frankfort, says that he believes the statements of the foregoing petition are true.

IRA JULIAN, *Mayor.*

Sworn to before me by Ira Julian, mayor of the city of Frankfort, on this November 13, 1895.

T. P. TREMERE,
Examiner for F. C.

112 *Equity Summons.*

THE COMMONWEALTH OF KENTUCKY:

To the sheriff of Franklin county, Greeting:

You are commanded to summon L. C. Norman, auditor, J. W. Headley, secretary of state, H. S. Hale, State treasurer, Deposit Bank of Frankfort, and State national bank and Farmers' Bank of Kentucky (sued with President, Directors & Co. of the Bank of Kentucky) to answer, on the first day of next January term of the Franklin circuit court, a petition in equity filed against them in said court by the Board of Councilmen of the City of Frankfort, and warn them that upon failure to answer, the petition will be taken for confessed or they will be proceeded against for contempt, and you will make due return of this summons on the first day of the next January term of said court.

Witness Thos. B. Ford, clerk of the said court, this 13th day of November, 1895.

THOS. B. FORD, *Clerk*,
By J. R. ELLIOTT, *D. C.*

Endorsed.

Executed the within summons by delivering to L. C. Norman, auditor, J. W. Headley, secretary of state, and H. S. Hale, State treasurer, a copy hereof, and on each of the defendant corporations by delivering to their respective presidents a copy hereof: Thos. Rodman, president of the Farmers' Bank of Kentucky, B. C. Milam, president of the Deposit Bank of Frankfort, and Fayette Hewitt, president of the State national bank, this November 14, 1895.

R. D. ARMSTRONG, *S. F. C.*,
By L. W. MERCHANT, *D. S.*

Equity Summons.

COMMONWEALTH OF KENTUCKY:

To the sheriff of Jefferson county, Greeting:

You are commanded to summon the President, Directors, and Company of the Bank of Kentucky (sued with L. C. Norman, auditor, etc.,) to answer, on the first day of next January term of the Franklin circuit court, a petition in equity filed against them in said court by the Board of Councilmen of the City of Frankfort, and warn them that upon failure to answer the petition will be taken for confessed, or they will be proceeded against for contempt, and you will make due return of this summons on the first day of the next January term of said court.

Witness, Thos. B. Ford, clerk of the said court, this 13th day of November, 1895.

THOS. B. FORD, *Clerk*,
By J. R. ELLIOTT, *D. C.*

113 Endorsed.

Came to hand November 15, 1895, at 9 a. m. Executed November 23, 1895, on Bank of Kentucky by delivering a copy of the within summons to E. W. Hays, cashier of said bank, he being (the) chief officer found in this county at this time.

JOHN R. PFLANZ, *S. J. C.*,
By AL. ——, *D. S.*

Franklin Circuit Court.

BOARD OF COUNCILMEN OF THE CITY OF Frankfort, Plaintiff,
versus.
L. C. NORMAN, Auditor, &c., Defendants.
} Notice of Motion for Mandamus.

The defendants, L. C. Norman, auditor, &c., are hereby notified that the plaintiff will on the 10th of the next January term of the Franklin circuit court, it being Wednesday, January 15, 1896, move the court to grant the mandamus prayed for in the above-styled case, upon the grounds stated in the petition therein.

HUGH RODMAN,
City Attorney, Frankfort, for Plaintiff.

Endorsed.

Executed the within notice by delivering to L. C. Norman, auditor, J. W. Headley, secretary of state, and H. S. Hale, State treasurer, a copy hereof, and on each of the defendant corporations by delivering to their respective presidents a copy hereof: Thos. Rodman, president of the Farmers' Bank of Kentucky; B. C. Milam, president of the Deposit Bank of Frankfort; and Fayette Hewitt, president of the State national bank, this November 14, 1895.

R. D. ARMSTRONG, *S. F. C.*,
By L. W. MERCHANT, *D. S.*

Franklin Circuit Court.

BOARD OF COUNCILMEN OF THE CITY OF Frankfort, Plaintiff,
versus
L. C. NORMAN, Auditor, &c., Defendants.
} Copy of Notice for Mandamus.

The defendants, L. C. Norman, auditor, &c., are hereby notified that the plaintiff will, on the tenth day of the next January term of the Franklin circuit court, it being Wednesday, January 15, 1896, move the court to grant the mandamus prayed for in the above-styled case, upon the grounds stated in the petition therein.

HUGH RODMAN,
City Attorney, Frankfort, for Plaintiff.

114 Endorsed.

Came to hand November 15, 1895, at 9 a. m.

Executed November 23, 1895, on Bank of Kentucky by delivering a copy of the within notice to E. W. Hays, cashier of said bank, he being chief officer found in this county at this time.

JNO. R. PFLANZ, *S. J. C.*,
By AL. ——, *D. S.*

Franklin Circuit Court.

Filed January 15, 1896.

BOARD OF COUNCILMEN OF THE CITY OF Frankfort, Plaintiff,
versus
L. C. NORMAN, &c., Defendants.
} Motion for Mandamus.

Pursuant to notice herein, the plaintiff now comes into court and moves the court to grant the mandamus prayed for in the petition and upon the grounds set forth in the petition.

HUGH RODMAN, *City Att'y.*
W. H. JULIAN, *Attorneys.*

Franklin Circuit Court.

JANUARY 15, 1896.

THE BOARD OF COUNCILMEN OF THE CITY OF FRANKFORT, Plaintiff,
versus
L. C. NORMAN, Auditor, &c., Defendants.
} Order.

Plaintiff appeared by attorney and filed a motion for a mandamus herein, and the court took time.

Franklin Circuit Court.

Filed January 22, 1896.

BOARD OF COUNCILMEN OF THE CITY of Frankfort, Plaintiff,
versus
L. C. NORMAN, Auditor, &c., Defendants.
} Answer of the President, Directors, and Company of the Bank of Kentucky.

The defendant, The President, Directors, and Company of the Bank of Kentucky, for answer to the plaintiff's petition, says:

That it is a corporation under the corporate name and style of "The President, Directors, and Company of the Bank of Kentucky," created by and organized under an act of the General Assembly of 115 the Commonwealth of Kentucky, approved February 22, 1834, entitled "An act to establish the Bank of Kentucky," with power to carry on a general banking business, and with all the privileges and powers conferred, and the duties and obligations imposed upon it by the said act and the amendments thereto: That it was so to continue a body corporate until the 1st day of October, 1864. By an act of the legislature, entitled "An act to extend the charter of the Bank of Louisville, Bank of Kentucky, and Northern bank," approved February 15, 1858, it was provided that the chartered privileges of this defendant should continue in full force for twenty years from the 1st day of October, 1864; that the stockholders of the bank should, within one year from the 10th day of May, 1858, by a vote of a majority of all the stockholders, given at a stated or called meeting, determine whether they would accept the proposed extension; and the bank accepting the provision of said act in the mode aforesaid, should notify the governor of the Commonwealth of the acceptance, by the certificate of the president and directors of the bank; and when notice should be thus given, the said act should be considered in full force as to the bank; that its stockholders did within one year from the 10th day of May, 1858, by a vote of more than a majority thereof given at such meeting as was prescribed by the act, determine that they would accept the proposed extension, and its president and directors by their certificate did notify the governor of the Commonwealth of such acceptance.

This defendant further states that by an act of the legislature entitled "An act to amend the charter of the Bank of Kentucky," approved February 1, 1892, it was provided that the charter of this defendant be, and the same was thereby extended and continued in full force for twenty-five years from October 1, 1884.

The said several acts of the legislature are referred to and made parts of this answer.

The defendant states that the fifteenth section of its said charter is in words and figures as follows:

"SEC. 15. That it shall be the duty of the cashier of the principal bank on the first day of July, 1836, and on the first day of July in each succeeding year during the continuance of this charter, to pay to the treasurer of this Commonwealth twenty-five cents on each one hundred dollars of stock held and paid for in said bank, which shall be in full of all tax or bonus; *Provided*, that the legislature may increase or diminish the same; but at no time shall the tax exceed fifty cents on each one hundred dollars of stock, paid for in said bank."

That by an act of the legislature, approved February 12, 1836, entitled, "An act to increase the revenue," the amount the defendant corporation was required to pay into the public treasury on the first day of July, 1836, and on the first day of July each year during the continuance of its charter, in full of all tax or bonus, was increased to fifty cents on each share of one hundred dollars of stock held and paid for in said bank.

This defendant avers, that in its said charter, and in the said acts extending the same are clearly stated all of the rights, powers and reservations retained over the same; and that the intent that
116 the State should not have the right to increase taxation upon it or its property for any purpose whatever, beyond the annual rate of fifty cents on each one hundred dollars of its stock held and

paid for, but that that rate and mode of taxation should be in full of all tax or bonus during the continuance of its charter as extended, is in its charter and also in the said acts extending the same plainly expressed. And the defendant alleges that in that certain action in this honorable court, wherein this defendant was the plaintiff, and the plaintiff The Board of Councilmen of the City of Frankfort, &c., were defendants, and decided by this court on the — day of May, 1884, and appealed to the court of appeals, it was adjudged by this court and by the court of appeals in its opinion (87 Ky., 370) held: That this defendant's charter created and the said acts of 1858 and 1872 continued in force an irrevocable contract, by the terms of which this defendant was required to pay annually into the State treasury fifty cents on each one hundred dollars of its capital stock "in full of all tax or bonus," and that no other or further tax, State, county or municipal, could be exacted from this defendant. It refers to as part hereof the record of said action on file in this honorable court, and the opinion and mandate of the court of appeals therein.

This defendant alleges that some time after the adoption of the original act of its incorporation and in conformity to its terms and provisions, it organized and established said bank and branches thereof, and, as required, established a branch of its bank at the seat of government, Frankfort, Kentucky, as the fiscal agent of and to aid in the management of the fiscal affairs of the State: that the bank and the Branch bank at Frankfort, Kentucky, which has been and is the fiscal agent of the State and has done and performed and is doing and performing all and every service required of it as such, it has maintained continuously to the present time under its said charter extended as aforesaid, exercising the powers, franchises, and privileges therein conferred, and performing all the duties and obligations therein imposed.

The defendant further says that under and by virtue of its charter extended and continued as aforesaid and as a part of the rights and privileges conferred and of the requirements imposed thereby, and in consideration of its organization and conduct thereunder and of the establishment, management, and maintenance of its principal and branch bank- therein required, it was authorized and bound, by the cashier of its principal bank on the first day of July of each and every year from July 1, 1836, and during the continuance of its charter, to pay to the treasurer of this Commonwealth fifty cents on each one hundred dollars of stock held and paid for in said bank, and that the same should be in full of all tax or bonus. It now avers that it has kept and performed all of the terms and requirements of its charter and the said acts extending the same: and has on the first day of July, 1836, and on the first day of July in each and every year up to and including the year 1886, by the cashier of its principal bank paid into the State treasury 50 cents on each share of $100 of its stock held and paid for; and that the same was during the said time much in excess of the rate of taxation imposed by the State upon other persons or corporations.

117 By an act of the General Assembly, entitled "An act to amend the revenue laws of the Commonwealth of Kentucky,"

approved May 17, 1886, and commonly known as the Hewitt bill (Gen'l Stats., chap. 92, art. 2), it is provided:

"SEC. 1. That shares of stock in State and national banks and other institutions of loan or discount, and in all corporations required by law to be taxed on their capital stock, shall be taxed seventy-five cents on each share thereof equal to one hundred dollars, or on each one hundred dollars of stock therein owned by individuals, corporations, or societies; and said banks, institutions, and corporations shall, in addition, pay upon each one hundred dollars of so much of their surplus, undivided profits, or undivided accumulations as exceeds an amount equal to ten per cent. of their capital stock, the same rate of taxation that is assessed upon real estate, which shall be in full of all tax, State, county, and municipal.

"SEC. 2. The cashier of a bank and the treasurer of any other institution or corporation, whose stock is taxed, shall, on the first day of July in each year, report to the auditor of public accounts the true amount of the capital stock, the true amount of surplus, undivided profits, or undivided accumulations, and how or in what said surplus, undivided profits, or undivided accumulations is invested, and pay into the treasury the amount of tax due.

"SEC. 4. That each of said banks, institutions, and corporations by its proper corporate authority, with the consent of a majority in interest of a quorum of its stockholders at a regular or called meeting thereof, may give its consent to the levying of said tax, and agree to pay the same as herein provided, and to waive and release all right under the act of Congress or under the charters of the State banks to a different mode or smaller rate of taxation, which consent or agreement to and with the State of Kentucky shall be evidenced by writing under seal of such bank and delivered to the governor of this Commonwealth; and upon such agreement or consent being delivered, and in consideration thereof, such bank and its shares of stock shall be exempt from all other taxation whatsoever so long as said tax shall be paid during the corporate existence of such bank."

It was further provided in the said act that the real estate or building owned and used by the bank in conducting its business, and that alone, might be taxed for county and municipal purposes as other real estate is taxed; and that the consent contemplated by the act, and the notice thereof to the governor, might be given at any time before the meeting of the next General Assembly, provided the tax should be paid by the bank from the passage of the act.

The defendant states that at a called meeting of its stockholders, held June 25, 1887, a majority in interest of a quorum of its stockholders did vote their consent to the levying of the tax prescribed in *section* 1 *of article* 2 of the said act, entitled "An act to amend the revenue laws of the Commonwealth of Kentucky," approved May 17, 1886, and to the agreement to pay the same, and waive and release all right under its charter to a *different mode or smaller rate of taxation;* and at a meeting of the board of directors of defendant,

held December 27, 1887, by resolution of said board it did
118 consent to the levying of the tax prescribed by the *first section of the second article* of the act of May 17, 1886, aforesaid, and agree to pay the same, and to waive and release all right under its charter to *a different mode or smaller rate of taxation;* and the said consent or agreement under the seal of defendant was, before the meeting of the General Assembly next after the passage of the said act, delivered to the governor of this Commonwealth, and a certified copy thereof is filed herewith as a part hereof.

(No such copy has been filed.

THOS. B. FORD, *Clerk*,
By J. R. ELLIOTT, *D. C.*)

The defendant alleges that through its cashier it has made its reports in proper form, as required by said act, and containing the information required to be reported, to the auditor of public accounts on the first day of July in each *of* every year from and including the year 1887 up to the present time, and has on the first day of July in each and every of said years tendered and paid into the State treasury the full tax required by said act, being seventy-five cents on each share of one hundred dollars of its capital stock, and in addition the same rate of taxation that was for each of said years respectively assessed upon real estate for each one hundred dollars of so much of its surplus, undivided profits, or undivided accumulations as exceeded an amount equal to ten per cent. of its capital stock; and it has also, from and including the year 1887 to the present time for each of said years, listed with the assessors for the counties and cities where its principal office and branch are located, for taxation for county and city purposes, its real estate used by it in conducting its business, and for each of said years paid to each of the cities and counties where its principal office and branch are located the full amount of tax for county and municipal purposes assessed on all real estate and buildings used in conducting the business of the said principal and branch bank.

This defendant admits that it made to the defendant auditor the report mentioned, and referred to in the petition, and it made similar reports for two or three years before; but it avers that it made the said reports upon the demand of the auditor, and under protest as not required of it by law, and under the fear and duress of penal prosecutions if it refused to make said reports. This defendant insisted that it was protected by the said tax provisions of its charter, and the above-mentioned provisions of the act to amend the revenue laws, approved May 17, 1886, and the said contract made between it and the State thereunder; but it was claimed by the auditor, the agent of the State, and by the plaintiff in this action that the said charter provision and the act of May 17, 1886, and the contract thereunder had been superseded and repealed by the new constitution of the State of Kentucky which went into operation on September 28, 1891, and by the acts of the legislature, "An act relating to revenue and taxation," which went into effect November 11, 1892 (chapter

103, Acts 1891-'2-'3), and the other, entitled, "An act for the government of cities of the third class," approved June 14, 1893, the plaintiff being a city of the third class; and that under the provisions of the said two last-mentioned acts the property and
119 franchise of this defendant was assessed for taxation both for
State, county, and municipal purposes, and that if the reports were not made the penalties prescribed in such cases by the said acts would be enforced. This defendant, protesting against the said acts as illegal in their application to it, made the said reports under protest and duress as aforesaid.

The defendant states that the said constitution of Kentucky provides that all property, whether owned by natural persons or corporations, shall be taxed in proportion to its value, and that all corporate property shall pay the same rate of taxation paid by individual property. And the State of Kentucky by the said two acts of November 11, 1892, and June 14, 1893, provided for the taxation of all property and the franchise of all banking corporations for State, county, and municipal purposes in proportion to its value, to be ascertained as provided for in said act of November 11, 1892, and for the same rate of taxation paid by individual property. The defendant says that said system of taxation on the banks of the State as provided in said acts, if applied to this defendant, would be much higher and more onerous than that described in the said act of May 17, 1886, in that defendant would be required to pay full municipal taxes in addition to State taxes. and the consideration which induced the defendant to consent to be taxed under and in accordance with the terms of its contract with the State under the act of May 17th would wholly fail.

It avers that the said constitutional provisions and said two acts of the legislature in so far as they or either of them were intended to apply to the taxation of this defendant, its property or franchise, are illegal and unconstitutional, and are a violation of the Constitution of the United States, and especially the section thereof providing that no State shall pass any law impairing the obligation of a contract: That the defendants, the auditor, treasurer, and secretary of state, nor any or either of them, had any warrant or authority of law, from said statement by defendant to the auditor or any other evidence, to ascertain or fix the value of this defendant's franchise for taxation under levies of 1895, or any other, or for any other purpose. And this defendant is not bound by any value of its franchise so ascertained or fixed.

It avers that the defendant auditor has no right or authority in law, and is not required by section 4084 of the Kentucky Statutes, which is section 8 of art. 3, chap. 103 of the Acts of 1891-'2-'3 (act of November 11, 1892), to certify to the county clerk of Franklin or any other county any assessment of this defendant's franchise or property, nor the amount thereof liable for county, city, town, or district tax; and that the board of valuation and assessment has no right or authority in law, and is not required by section 4077 of the Kentucky Statutes, which is section 1 of art. 3 of the said act of November 11, 1892, (sec. 1, art. 3, chap. 103, Acts 1891-'2-'3) to ascertain the value of this defendant's franchise or to apportion the same in or among any localities for the purpose of local taxation, or for any purpose; nor is this defendant's franchise by law subject to valuation or assessment or taxation for local or any purpose, because the defendant says that the said sections and provisions in said statute are as to this defendant unconstitutional and void.

120 The defendant further states that heretofore, to wit, on the 6th day of September, 1894, it filed its petition in equity in this honorable court, wherein it made the Board of Councilmen of the City of Frankfort defendant, and therein alleged its incorporation, the provisions of its charter in regard to taxation, the facts and circumstances connected with its said contract with the State of Kentucky under what is commonly known as the "Hewitt law" aforesaid; and alleged that the provisions of the constitution of the State of Kentucky now in force and then in force, and all laws passed in the alleged pursuance thereof, which endeavored to subject this defendant (who was the plaintiff in that action) to any other or different mode or rate of taxation than that set out in the said Hewitt law, was unconstitutional, void, and of no effect; and further alleged that the said Board of Councilmen of the City of Frankfort was endeavoring and threatening to assess, levy, and collect taxes upon the franchise and upon the property of this defendant (the plaintiff in said action) other than upon the real estate occupied and used in conducting its business, and prayed that the said Board of Councilmen of the City of Frankfort should be perpetually enjoined and restrained therefrom; that upon the said petition summons was duly issued and served upon, and there was an appearance by the said Board of Councilmen of the City of Frankfort in said action, and such proceedings were had therein that when the cause came on to be heard upon its merits *and* this court adjudged that the city of Frankfort, or its officers, had no right to assess for taxation for city purposes, the intangible property of this defendant (plaintiff therein); but also adjudged that this defendant was liable for assessment and taxation under the provisions of the said act of November 11, 1892, whereupon this defendant prayed an appeal to the court of appeals, which was granted; that the said appeal was prosecuted with effect, and so that the said judgment of this court in said cause was reversed and the said cause was remanded with a direction to enter a judgment in conformity with the opinion of the court of appeals therein; and thereupon the said cause having been duly redocketed, the following judgment was entered therein; that is to say, to wit:

Franklin Circuit Court.

THE PRESIDENT, DIRECTORS, AND COMPANY OF THE Bank of Kentucky, Plaintiff,
versus
BOARD OF COUNCILMEN OF THE CITY OF FRANKFORT, &c., Defendants.
} Judgment.

This day came the parties by their attorneys, and this cause having been heretofore submitted for a judgment conforming to the opinion and mandate of the court of appeals heretofore filed, reversing the former judgment of this court, and the court being now sufficiently advised, it is adjudged that article 2 of the act of the General Assembly entitled "An act to amend the revenue laws of the Commonwealth of Kentucky," approved May 17, 1886 121 (Gen. Stats., chap. 92, art. 2), and the acceptance of the provision thereof by the plaintiff constituted a contract between the plaintiff and the Commonwealth, which the latter cannot alter or change without the consent of the former, by the terms of which contract the plaintiff cannot, during the continuance of its charter, be assessed for taxation or taxed for State purposes in a different mode or at a greater rate of taxation than as provided for in said act, and can be assessed for taxation and taxed for county and municipal purposes only upon its real estate used by it in conducting its business. That the provisions of the present constitution of this State and of the act of November 11, 1892 (art. 3, chap. 103, Acts 1891-'2-'3), in so far as they were intended to provide for any assessment or taxation of the plaintiff's property, rights or property, or franchise, except to assess and tax for county and municipal purposes its real estate used in conducting its business, are in violation of and repugnant to the Federal constitution and void. That the board of valuation and assessment provided for in said act of November 11, 1892, had and has no authority in law to assess or value the plaintiff's franchise for taxation, or the auditor to apportion or certify the same or any part of the same for county or municipal taxation. That the temporary injunction which was granted in this cause at the commencement of the action, be and the same is now hereby made perpetual, and the defendants be, and each of them are, perpetually enjoined and restrained from levying upon or selling any of the property of the plaintiff, for the purpose of collecting any taxes for the city of Frankfort upon the franchise or property of the plaintiff, except taxes upon its real estate used in conducting its business. And it is further adjudged that the plaintiff recover of the defendant its costs in this action expended.

The defendant refers to the record of said cause and the said judgment and the opinion of the court of appeals therein, all on file in the honorable court as part hereof, the same as *it* copied in full herein.

And this defendant now pleads and relies upon the said judgments as *res adjudicata* of the controversy attempted to be made in this action.

And having fully answered it prays to be hence dismissed.

HUMPHREY & DAVIE,
D. W. LINDSEY,
Attorneys for Bank of Kentucky.

Franklin Circuit Court.

Filed January 22, 1896.

THE BOARD OF COUNCILMEN OF THE City of Frankfort, Plaintiff, *versus* L. C. NORMAN, Auditor, Defendant.	Answer of Farmers' Bank of Kentucky.

For answer the defendant, The Farmers' Bank of Kentucky, states that it was incorporated and chartered by an act of the General Assembly of the Commonwealth of Kentucky, entitled "An 122 act to incorporate the Farmers' Bank of Kentucky," approved February 16, 1850, which act, together with all the amendments thereto, are referred to as part hereof; said act provides that the Farmers' Bank of Kentucky shall constitute a body politic and corporate until the 1st day of May, 1880.

It states that by reason of said act of incorporation it undertook and agreed to perform certain public duties therein mentioned, such as carrying on the banking business, loaning money, discounting notes and bills of exchange, etc., and it states that in accordance with said provisions of said charter it has fully performed all of its duties to the public and complied with its contract with the State.

That its principal bank, and principal place of business is in Frankfort, Ky. That one of its branches is in the city of Henderson, Ky., and one in Georgetown, Ky., all of which are in existence and operation.

The plaintiff states that by the terms of its charter and in consideration of its organization and acceptance of the same, it was authorized and bound, by the cashier of its principal bank, on the first day of July of each year and every year thereafter during the existence of its charter, to pay to the treasurer of Kentucky fifty cents on each one hundred dollars of stock held and paid for in said bank, which shall be in full of all tax or bonus.

Said provision is in *section* 15 of said act of 1850, chartering this plaintiff, and reads as follows: "It shall be the duty of the cashier of the principal bank on the first day of July, 1891, and on the first day of July in each succeeding year during the continuance of this charter, to pay into the treasury of the Commonwealth fifty cents on each one hundred dollars of stock held and paid for by said bank, which shall be in full of all tax or bonus, Provided that no tax shall be paid until said bank goes into operation: And provided further that the tax or bonus hereby proposed to be imposed on each share is set apart and forever dedicated to the cause of education on the common-school system, and whenever the same or any part thereof shall be directed otherwise by legislative enactment, said bank shall be exonerated from the payment of any tax or bonus whatever."

The plaintiff states that said contract and stipulations as contained in said charter fixing the rate of taxation of plaintiff's property conduced to an acceptance by plaintiff of said charter and the plaintiff was thereby induced to and did organize under said charter in a short time after its passage by the legislature; and the said contract and provision in regard to taxation has been relied on by plaintiff and has conduced to the maintenance and operation of plaintiff's bank and its said branches.

That by an act entitled "An act extending the charter of the Farmers' Bank of Kentucky," approved March 10, 1876, the legislature of Kentucky extended the plaintiff's charter for a period of twenty-five years from the time of the expiration of its original charter, to wit: twenty-five years from the first day of May, 1880; said act is referred to as part hereof, and reads as follows:

"That the charter of the Farmers' Bank of Kentucky, as amended,
be extended for the period of twenty-five (25) years from the
123 termination of its charter as therein fixed, Provided that said
charter and amendments shall be subject to amendment or
repeal by the General Assembly, either by general or special act: And provided further, that whilst the privileges and franchises so granted may be changed or repealed, no amendment or repeal shall impair other rights previously vested."

Acts 1886, volume 2, page 324. Said acts are referred to as part hereof.

That in accordance with the provisions of its charter and the contract therein contained between the plaintiff and the Commonwealth of Kentucky, it paid to the treasurer of the Commonwealth of Kentucky on the first day of July in each year ever since its organization, and up to the 6th day of December, 1887, an annual tax of fifty (50) cents on each one hundred dollars of stock held and paid for in said bank, which payments, as plaintiff was advised, were in full of all tax or bonus, and the same was received and accepted by the Commonwealth of Kentucky in full of all tax or bonus against this plaintiff.

This defendant avers, that in its said charter and the said acts extending same are clearly stated all of the rights, powers, and reservations retained over the same; and that the intent that the State should not have the right to increase taxation upon it or its property for any purpose whatever beyond the annual rate of fifty cents on each one hundred dollars of its stock held and paid for; but that that rate and mode of taxation should be in full of all tax or bonus during the continuance of its charter as extended, is in its charter, and also in the said acts extending the same, plainly expressed. And the defendant alleges that in that certain action in this honorable court, wherein this defendant was the plaintiff and the plaintiff The Board of Councilmen of the City of Frankfort, &c., were defendants, and decided by this court on the — day of May, 1884, and appealed to the court of appeals, it was adjudged by this court, and by the court of appeals, in its opinion (87 Ky., 370), held: that this defendant's charter created, and the act approved March 10, 1876, continued in force an irrevocable contract, by the terms of which this defendant was required to pay annually into the State treasury fifty cents on each one hundred dollars of its capital stock "in full of all tax or bonus," and that no other or further tax, State, county, or municipal, could be exacted from this defendant. It refers to, as parts hereof, the record of said action on file in this honorable court and the opinion and mandate of the court of appeals therein.

This defendant alleges that after the adoption of the original act of its incorporation, and in conformity to its terms and provisions, it organized and established said bank and branches, the principal bank being at Frankfort and the branches in Henderson and Georgetown, Kentucky. That it has duly performed, and is now performing all the services required of it as such corporation, it has exercised and is now exercising all the powers, franchises, and privileges conferred in said charter, and is now performing all the duties and obligations therein imposed.

The defendant says that under and by virtue of its charter extended and continued as aforesaid and as part of the rights 124 and privileges conferred and of the requirements imposed thereby, and in consideration of its organization and conduct thereunder and of the establishment, management, and maintenance of its principal and branch banks therein required, it was authorized and bound by the cashier of its principal bank on the first day of July of each and every year from July 1, 1850, and during the continuance of its charter, to pay to the treasurer of the Commonwealth fifty cents on each one hundred dollars of stock held and paid for in said bank, and that the same should be in full of all tax or bonus. It now avers that it has kept and performed all of the terms and requirements of the said acts extending the same; and has on the first day of July, 1850, and on the first day of July in each and every year up to and including the year 1886, by the cashier of its principal bank paid into the State treasury fifty cents on each share of $100 of its stock held and paid for; and that the same was during the said time much in excess of the rate of taxation imposed by the State upon other persons or corporations.

By an act of the General Assembly, entitled "An act to amend the revenue laws of the Commonwealth of Kentucky," approved May 17, 1886, and commonly known as the Hewitt bill (Gen'l Stats., chap. 92, art. 2), it is provided:

"Sec. 1. That shares of stock in State and national banks and other institutions of loan or discount, and in all corporations required by law to be taxed on their capital stock, shall be taxed twenty-five cents on each share thereof equal to one hundred dollars, or on each one hundred dollars of stock therein owned by individuals, corporations, or societies, and said banks, institutions, and corporations shall, in addition, pay upon each one hundred dollars of so much of their surplus or undivided accumulations as exceeds an amount equal to ten per cent. of their capital stock, the same rate of taxation that is assessed upon real estate, which shall be in full of all tax, State, county, and municipal.

"Sec. 2. The cashier of a bank, and the treasurer of any other institution or corporation, whose stock is taxed, shall, on the first day of July in each year, report to the auditor of public accounts the true amount of capital stock, the true amount of surplus, undivided profits, or undivided accumulations, how or in what said sur.

plus undivided profits or undivided accumulations is invested, and pay into the treasury the amount of tax due.

"SEC. 4. That each of the said banks, institutions, and corporations, by its proper corporate authority, with the consent of a majority in interest of a quorum of its stockholders, at a regular or called meeting thereof, may give its consent to the levying of said tax, and agree to pay the same as herein provided, and to waive and release all right under the acts of Congress or the charters of the State banks to a different mode or smaller rate of taxation, which consent or agreement to and with the State of Kentucky shall be evidenced by writing under seal of such bank and delivered to the governor of this Commonwealth; and upon such agreement or consent being delivered, and in consideration therefor, such bank and its shares of stock shall be exempt from all other taxation whatsoever so long as said tax shall be paid during the corporate existence of such bank."

125 It was further provided in the said act that the real estate or building owned and used by the bank in conducting its business, and that alone, might be taxed for county and municipal purposes as other real estate is taxed; and that the consent contemplated by the act, and the notice thereof to the governor, might be given at any time before the meeting of the next General Assembly, provided the tax should be paid by the bank from the passage of the act.

The defendant states that previous to the next session of the General Assembly of the Commonwealth of Kentucky after the passage of said act, and within the time fixed by said act for an acceptance of the proposition of the State of Kentucky, to wit, on the 6th day of December, 1897, the defendant, The Farmers' Bank of Kentucky, at an adjourned meeting of a majority of a quorum of the stockholders of said bank, did consent and agree to and with the Commonwealth of Kentucky to the levying and payment of said tax as provided in and by article 2, chapter 92, of said act entitled "An act to amend the revenue laws of the Commonwealth of Kentucky," approved May 17, 1886, and waived and released all rights under its charter to a different mode or smaller rate of taxation, which agreement with the State of Kentucky was evidenced by writing under the seal of defendant, and delivered to the governor of the Commonwealth of Kentucky as provided by said act, and within the time prescribed by said act; a certified copy of said agreement is filed herewith as part hereof, marked "A," and the defendant in all respects complied with all the requirements of said act.

(No such copy has been filed.

THOS. B. FORD, *Clerk*,
By J. R. ELLIOTT, *D. C.*)

And the said consent or agreement, under the seal of defendant, was, before the meeting of the General Assembly next after the passage of said act, delivered to the governor of the Commonwealth.

The defendant alleges that through its cashier it has made its reports, in proper form as required by said act, and containing the information required to be reported, to the auditor of public accounts on the first day of July in each and every year from and including the year 1887 up to the present time, and has on the first day of July in each and every of said years tendered and paid into the State treasury the full tax required by said act, being 75 cents on each share of $100 of its capital stock, and in addition the same rate of taxation that was for each of the said years respectively assessed upon real estate for each one hundred dollars of so much of its surplus, undivided profits or undivided accumulations as exceeded an amount equal to ten per cent. of its capital stock; and it has also from and including the year 1887 to the present time for each of said years listed with the assessors for the counties and cities where its principal office and branches are located, for taxation for county and city purposes, its real estate used by it in conducting its business, and for each of said years paid to each of the cities and counties where its principal office and branches are located the full amount of tax for county and municipal purposes assessed on all real estate and buildings used in conducting the business of the said principal and branch banks.

This defendant admits that it made to the defendant 126 auditor the report mentioned and referred to in the petition, and it made similar reports for two or three years before; but it avers that it made the same reports upon the demand of the auditor and under protest as not required of it by law, and under the fear and duress of penal prosecution if it refused to make said reports.

This defendant insisted that it was protected by the said tax provisions of its charter, and the above-mentioned provisions of the act to amend the revenue laws, approved May 17, 1886, and the said contract made between it and the State thereunder; but it was claimed by the auditor and by the plaintiff in this action that the said charter provision and the act of May 17, 1886, and the contract thereunder had been superseded and repealed by the new constitution of the State of Kentucky, which went into operation Nov. 11, 1892, and by the acts of the legislature, the one entitled "An act relating to revenue and taxation," which went into effect November 11, 1892 (chap. 103, Acts 1891–'2–'3), and the other entitled "An act for the government of cities of the third class," approved June 11, 1893; and that under the provisions of the last-mentioned acts the property and franchise of this defendant was assessable for taxation for both State, county, and municipal purposes, and that if the reports were not made the penalties prescribed in such cases by the said acts would be enforced.

This defendant, protesting against the said acts as illegal in their application to it, made the said reports under protest and duress as aforesaid.

It avers that the constitutional provisions, and the said two acts of the legislature in so far as they or either of them were intended to apply to the taxation of this defendant, its property or — are unconstitutional and are a violation of the Constitution of the United

States, and especially the section thereof providing that no State shall pass any law impairing the obligation of contracts; that the defendant-, the auditor, treasurer, and secretary of state, nor any or either of them had any warrant or authority in law, from said statement made by the defendant to the auditor or any other evidence, to ascertain or fix the value of this defendant's franchise for taxation under levies of 1895, or any other, or for any other purpose. And this defendant is not bound by any value of its franchise so ascertained or fixed.

It avers that the defendant auditor has no right or authority in law, and is not required by section 4084 of the Kentucky Statutes, which is section 8 of article 3 of chapter 103 of the Acts of 1891–'2–'3 (act of November 11, 1892), to certify to the county clerk of Franklin or any other county any assessment of this defendant's franchise or property, nor the amount thereof liable for county, city, town, or district tax; and that the board of valuation and assessment has no right or authority in law, and is not required by section 4077 of the Kentucky Statutes, which is a section of article 3 of the said act of November 11, 1892 (sec. 1, art. 3, chap. 103, Acts 1891–'2–'3), to ascertain the value of this defendant's franchise or to apportion the same in or among any localities for the purpose of local taxation, or for any purpose; nor is this defendant's franchise by law subject to valuation or assessment for taxation for local or any purpose; be-
cause the defendant says that the said section and provisions
127 in said section are as to this defendant unconstitutional and
void. The defendant further states that heretofore, to wit, on the 6th day of September, 1894, it filed its petition in equity in this honorable court, wherein it made The Board of Councilmen of the City of Frankfort defendant, and therein alleged its incorporation, the provision of its charter in regard to taxation, the facts and circumstances connected with its said contract with the State of Kentucky under what is commonly known as the "Hewitt law" aforesaid; and alleged that the provisions of the constitution of the State of Kentucky now in force and then in force, and all laws passed in the alleged pursuance thereof, which endeavor to subject this defendant (who was the plaintiff in that action) to any other or different mode or rate of taxation than that set out in the said Hewitt law was unconstitutional, void, and of no effect; and further alleged that the said Board of Councilmen of the City of Frankfort was endeavoring and threatening to assess, levy, and collect taxes upon the property of this defendant (the plaintiff in said action) other than upon real estate occupied and used in conducting its business, and prayed that the said Board of Councilmen of the City of Frankfort should be perpetually enjoined and restrained therefrom; that upon the said petition summons was duly issued and served upon and there was an appearance by the said Board of Councilmen of the City of Frankfort in said action, and such proceedings were had therein that when the cause came on to be heard upon its merits the petition of this defendant (plaintiff therein) was dismissed; whereupon this defendant prayed an appeal to the court

of appeals, which was granted; and the said appeal was prosecuted with effect, and so that the said judgment of this court in said cause was reversed, and the said cause was remanded with the direction to enter a judgment in conformity with the opinion of the court of appeals therein; and thereupon, the said cause having been duly docketed, the following judgment was entered therein; that is to say, to wit:

This day came the parties by their attorneys, and this cause having been heretofore submitted for a judgment conforming to the opinion and mandate of the court of appeals heretofore filed reversing the former judgment of this court, and the court being sufficiently advised, it is adjudged that article 2 of the act of the General Assembly, entitled "An act to amend the revenue laws of the Commonwealth of Kentucky," approved May 17, 1886 (General Stats., chapter 92, article 2), and the acceptance of the provisions thereof by the plaintiff, constituted a contract between the plaintiff and the Commonwealth, which the latter cannot alter or change without the consent of the former; by the terms of which contract the plaintiff cannot, during the continuance of its charter, be assessed for taxation or taxed for State purposes in a different mode or at a greater rate of taxation than as provided for in said act, and can be assessed for taxation and taxed for county and municipal purposes only upon its real estate used by it in conducting its business; that the provisions of the present constitution of this State and of the act of November 11, 1892 (art. 3, chap. 103, Acts 1891-'2-'3), in so far as they were intended to provide for any assessment or taxation of the plaintiff's property, rights of property or franchise, except 128 to assess and tax, for county and municipal purposes, its real estate used in conducting its business, are in violation of and repugnant to the Federal Constitution and void; that the board of valuation and assessment provided for in said act of November 11, 1892, had and has no authority in law to assess or value the plaintiff's franchise for taxation, or the auditor to apportion or certify the same or any part of the same, for county or municipal taxation; that the temporary injunction which was granted in this cause at the commencement of the action be, and the same is now hereby, made perpetual, and the defendants be, and each of them are, perpetually enjoined and restrained from levying upon or selling any property of the plaintiff's for the purpose of collecting any taxes for the city of Frankfort upon the franchise or property of plaintiff except taxes upon its real estate used in conducting its business. And it is further adjudged that the plaintiff recover of the defendant its costs in this action expended.

Defendant also states tha tthis honorable court, in said case of The Farmers' Bank of Kentucky *v.* The Board of Councilmen of the City of Frankfort, &c., also decided and perpetually enjoined the defendants from assessing any of the plaintiff's property for taxation, except the real estate used by plaintiff for banking purposes, wherefore defendant pleads and relies upon the above facts and judgment in bar of plaintiff's action, and is *res adjudicata*, or the matter in controversy, and asks that plaintiff's petition be dismissed and to be dismissed with costs, and for all proper relief.

JOHN W. RODMAN,
Attorney for Defendant.

Thomas Rodman says he is the president of the Farmers' Bank of Kentucky, and he believes the foregoing statements are true.

—— ——.

Sworn to and subscribed before me this 22d day of January, 1896.

—— ——,
Examiner for Franklin County, Ky.

Franklin Circuit Court.

Filed February 5, 1896.

BOARD OF COUNCILMEN OF THE CITY OF FRANKFORT, Plaintiff, *versus* DEPOSIT BANK OF FRANKFORT, &c., Defendants.	Answer of Deposit Bank of Frankfort.

For answer herein the defendant Deposit Bank of Frankfort says it is a corporation created by an act of the General Assembly of the Commonwealth of Kentucky, approved March 3, 1863, entitled "An act to incorporate the Deposit Bank of Frankfort," under which act this defendant was duly organized and constituted as such corporation under the corporate name and style of the "Deposit Bank of Frankfort," and has been continuously since the year 1868 doing business as a bank in the city of Frankfort under the authority conferred by said act and the several amendments thereof which are hereinafter set out.

129 By the terms of said act the defendant was authorized to do the general business of a bank in said city for the period of twenty years from March 3, 1863. But by the terms of another act of the General Assembly, entitled "An act to amend the charter of the Deposit Bank of Frankfort," approved March 6, 1871, it is provided as follows: "That the tax or bonus now paid by said bank (meaning this defendant) in future shall be in full of all taxation. But this shall not apply to the city tax on real estate owned by it."

The tax or bonus above referred to was the fifty cents on each one hundred dollars' worth of its capital stock then paid [illegible] the defendant under the general law of the State then in forc[illegible]

By another act of said General Assembly, approved February 23, 1882, entitled "An act to extend the charter of the Deposit Bank of Frankfort," all the privileges and franchises granted to the defendant by said act of March, 1863, as amended by the act of March, 1871, were extended and continued in force for the period of twenty years from March 3, 1882.

Defendant avers that it paid annually to the State fifty cents on each $100 worth of its capital stock in lieu of all tax or bonus against it, until the act of the said assembly, approved May 17, 1886, entitled "An act to amend the revenue laws of the Commonwealth of Kentucky," went into effect.

The first section of article 2 of that act has this provision: "That shares of stock in State and national banks and other institutions of loan and discount, and in all other corporations required to be taxed by law upon their capital stock, shall be taxed seventy-five cents on each share thereof equal to one hundred dollars of stock therein owned by individuals, corporations, or societies, and said banks, institutions, and corporations shall in addition pay upon each one hundred dollars of so much of their surplus, undivided profits, or undivided accumulations as exceed an amount equal to ten per cent. of their capital stock, the same rate of taxation that is assessed upon real estate, which shall be in full of all tax, State, county, and municipal."

Section 4 of said act reads as follows:

"That each of said banks, institutions, and corporations by its proper corporate authority, with the consent of a majority in interest of a quorum of its stockholders at a regular or called meeting thereof, may give its consent to the levying of said tax, and agree to pay the same as herein provided, and to waive and release all rights under acts of Congress or under the charters of the State banks to a different mode or smaller rate of taxation, which consent or agreement to and with the State of Kentucky shall be evidenced by writing under the seal of each bank and delivered to the governor of this Commonwealth; and upon such agreement being delivered, and in consideration thereof, such bank and its shares of stock shall be exempt from all other taxation whatsoever so long as said tax shall be paid during the corporate existence of such bank."

Defendant avers that by its proper corporate authority and with the consent of a majority in interest of a quorum of its stockholders, at a called meeting thereof, held at said bank on the —day
of July, 1887, it did give its consent to the levying of said
130 tax of 75 cents on each share of its capital stock equal in
value to $100, and agreed to pay the same together with the same tax as is assessed on real estate upon so much of its surplus, etc., as exceeds an amount equal to 10 per cent. of its capital stock, as in said act provided, and further agreed to waive and release all rights under its charter to a different mode or smaller rate of taxation, which consent and agreement to and with the State was evidenced by writing under the seal of the defendant, and delivered by the defendant to the governor of the Commonwealth on the — day of July, 1887.

Defendant avers that it has annually, since the above-recited act became a law, through its cashier reported under oath on the 1st day of July in each year to the auditor of public accounts the true amount of its capital stock, surplus, undivided profits, and undivided accumulations, and how the same were invested, and has annually paid in July of each year since said act went into effect, up to and including July, 1892, into the State treasury the whole amount of tax due from defendant under terms of said act.

The defendant says it tendered to the auditor the amount due from it to the State under said act, on the first days of July, 1893, 1894, and 1895, but the tender was refused at the said times, but has since been accepted by the said auditor.

By all of which defendant avers that it has and holds a valid contract with the Commonwealth of Kentucky, by which it and its shares of stock are exempt from all other taxation, State, county, and municipal.

Defendant avers that in its said charter, as amended, and in the said act of 1886, hereinbefore set out, are stated all the rights and reservations intended to be retained by the State over the defendant as to taxation, and the intent that the State should not have the right to increase taxation upon it or its property for any purpose whatever beyond the annual tax required to be paid to the State, was clearly expressed. And defendant avers that in the action in this court wherein this defendant was plaintiff and the plaintiff city was defendant, pending in the common pleas court of Franklin county, and which was decided at the May term, 1884, of said court, and appealed to the court of appeals, and was adjudged by said court and affirmed by the court of appeals in its opinion—see 87 Ky., 370—it was held: That this defendant's charter, as amended, created and continued in force an irrevocable contract by the terms of which this defendant was required to pay annually into the State treasury fifty cents on each one hundred dollars of its capital stock, which was in full of all tax or bonus against defendant, and that no other tax could be exacted of defendant.

The records of said common pleas court have since been turned over to and become a part of the records of this court, and the said suit and all the papers therein are here referred to as part hereof. Defendant made the report to the auditor referred to in the petition, but at the time denied the right of the auditor to demand such report, and only made the report under the fear of a penal prosecution if it refused to do so. This defendant claimed at the time that it was protected and relieved from making said report by its
131 said charter exemptions and by the terms of its aforesaid contract under the act of 1886. But the auditor and the plaintiff city claimed that the said charter exemptions and the said act of 1886 had been repealed by the new constitution and acts of the legislature which went into effect November 11, 1892 (chap. 103, Acts of 1891–'2–'3), and another act entitled "An act for the government of cities of the third class," approved June 14, 1893, the plaintiff being a city of the third class; and that under the provisions of the said two last-mentioned acts, the property and franchise of the defendant was assessable for county and municipal purposes, and that if the said reports were not made the penalties imposed by said acts would be imposed.

The defendant avers that the provisions of the said two last-mentioned acts, and of the constitution, in so far as either of them was intended to apply to the taxation of this defendant, its property or franchise, are illegal and void, and in violation of the Constitution of the United States, and particularly that section thereof which provides that no State shall pass any law impairing the obligation of contracts. Neither the auditor, treasurer, or secretary of state, nor all of them, had any warrant or authority of law from said report made by defendant to the auditor, or any other evidence, to ascertain or fix the value of this defendant's franchise for taxation under levies of 1895 or any other year or for any other purpose. And this defendant avers that it is not bound by any value of its franchise so ascertained or fixed.

It avers that the defendant auditor has no right or authority in law and is not required by section 4084 of the Kentucky Statutes to certify to the county clerk of Franklin county any assessment of this defendant's franchise or property, nor the amount thereof liable for county, city, or other tax; and that the board of valuation and assessment has no right or authority in law, and is not required by section 4077 of Kentucky Statutes to ascertain the value of this defendant's franchise or to apportion the same in or among any localities for the purposes of local taxation, or for any purpose whatever, because the defendant avers that said sections are as to this defendant unconstitutional and void.

This defendant further avers that the plaintiff Board of Councilmen of the City of Frankfort filed its petition in this honorable court on 22d day of August, 1894, against this defendant, and by said suit sought to enforce the collection from this defendant of municipal taxes upon its said franchise and property other than real estate. To which action this defendant made and filed its answer setting up and relying upon the charter exemptions, and the exemptions under the aforesaid act of 1886, hereinbefore set out at length, and such proceedings were had in that case, that the following judgment was rendered therein by this court:

Franklin Circuit Court.

Board of Councilmen of the City of Frankfort, Plaintiff,
versus
Deposit Bank of Frankfort, Defendant.
} Judgment.

"It appearing to the court that this action has been continued and not heretofore submitted by agreement between the plaintiff and defendant by their respective attorneys, that this action should stand upon the answer filed by the defendant until the decision by the court of appeals in the two cases appealed from this court, in one of which the defendant bank was plaintiff and The County of Franklin, &c., were defendants, and in the other The Commonwealth for the use of said county was plaintiff, and the defendant bank was defendant, and the liability of the bank for the taxes claimed in this case should be settled and determined by the decision of the court of appeals in said two cases; and it further appearing to the court by the mandates and opinions of the court of appeals filed in said two cases that the court of appeals has sustained the defense set up and relied on by the bank, in said two cases based upon the contract made by bank under the Hewitt bill, which is the same contract relied on as the defense in this case : it is now ordered and adjudged that art. 2 of the act of the General Assembly, entitled 'An act to amend the revenue laws of the Commonwealth of Kentucky,' approved May 17, 1886 (Gen'l Statutes, chap. 92, art. 2), and the acceptance of the provisions thereof by the defendant, constituted a contract between the defendant and the Commonwealth which the latter cannot alter or change without the consent of the former; by the terms of which contract the defendant cannot, during the continuance of its charter, be assessed for taxation or taxed for State purposes in a different mode or at a greater rate of taxation than as provided for in said act, and can be assessed for taxation and taxed for county and municipal purposes only upon any real estate it may own ; that the provisions of the present constitution of this State and of the act of November 11, 1892 (art. 3, chap. 103, Acts 1891–'2–'3), in so far as they were intended to provide for any assessment or taxation of the defendant's property, rights of property or franchise, except its said real estate, are in violation of, and repugnant to, the Federal Constitution and void ; that the board of valuation and assessment provided for in said act of November 11, 1892, had and has no authority in law to assess or value the defendant's franchise for taxation, or the auditor to apportion or certify the franchise of same or any part of the same, for county or municipal taxation ; that the temporary injunction which was prayed for in this case at the commencement of the action be now, and the same is now hereby granted, and the plaintiffs be and each of them are perpetually enjoined and restrained from levying upon or selling any property of the defendant for the purpose of collecting any taxes for the city of Frankfort upon the franchise or property of the defendant except upon its real estate. And it is further adjudged that the defendant recover of the plaintiffs its costs herein expended."

133 The aforesaid judgment was rendered at the January term, 1896, of this court, — together with the record in that suit and the opinion of the court of appeals aforesaid, are all referred to and asked to be taken as parts hereof.

And this defendant pleads and relies upon the aforesaid judgments as *res adjudicata* of the controversy attempted to be made in this action.

And having fully answered, defendant prays to be dismissed with its costs.

FRANK CHINN,
Attorney for Deposit Bank.

Franklin Circuit Court.

JANUARY 22, 1896.

THE BOARD OF COUNCILMEN OF THE CITY OF FRANKFORT,
Plaintiff,
versus
L. C. NORMAN, Auditor, &c., Defendants.
} Order.

The President, Directors, and Company of the Bank of Kentucky appeared by attorney and filed their answer herein, and this cause is set for the 16th day of this term.

Defendant, Farmers' Bank of Kentucky, appeared by attorney and filed its answer herein.

Franklin Circuit Court.

FEBRUARY 1, 1896.

THE BOARD OF COUNCILMEN OF THE CITY OF FRANKFORT,
Plaintiff,
versus
L. C. NORMAN, Auditor, &c., Defendants.
} Order.

Ten days' time is given defendant, Deposit Bank, to file its answer herein, to have the same effect as if filed now.

Franklin Circuit Court.

Offered to be filed April 9, 1897. Filed April 13, 1897.

BOARD OF COUNCILMEN OF THE CITY OF
Frankfort, Plaintiff,
versus
L. C. NORMAN, Auditor, &c., Defendants.
} Amendment to Original Petition and Petition of Franklin County.

The County of Franklin states that it is interested in the subject of the above-styled action of The Board of Councilmen of the City of Frankfort *v.* L. C. Norman, auditor, &c., and asks that it (Franklin County) be made a party plaintiff therein, and prays as in the original petition and first amendment thereto. Prays for costs and all proper relief.

W. H. JULIAN,
Attorney for Franklin County.

134 Franklin Circuit Court.

Offered to be filed April 9, 1897. Filed April 13, 1897.

BOARD OF COUNCILMEN OF THE CITY OF FRANKfort, Plaintiff,
versus
L. C. NORMAN, Auditor, &c., Defendants.
} Amendment to Petition.

The plaintiff, Board of Councilmen of the City of Frankfort, for amendment to original petition herein, states:

L. C. Norman is not now auditor. S. H. Stone is now auditor.

H. S. Hale is not now State treasurer. G. W. Long is now State treasurer. John Headley is not now secretary of state. Chas. Finley is now secretary of state. The reports to auditor mentioned and particularly set forth in original petition (as to 1895) have been also made by each of defendant banks in and for the year 1896, and defendants, auditor and secretary of state have failed to value the franchises of said banks or either of them or to apportion same or certify same to the county clerk of Franklin county as to either of the year 1896.

The County of Franklin is interested in the subject of this action and asks to be made a party plaintiff herein.

Wherefore, plaintiffs pray as in original petition, and also, that said Stone, auditor, Long, treasurer, and Finley, secretary of state, be made parties defendants herein, and that the mandamus prayed for in original petition be extended so as to apply to and embrace valuation, apportionment, and certification to county clerk for the year 1896. Prays for costs and all other proper relief.

W. H. JULIAN,
Attorney for Plaintiff.

Affiant says he believes the statements of the foregoing amendment are true.

IRA JULIAN, *Mayor.*

Sworn to before me by Ira Julian, mayor of the city of Frankfort, on this April 7, 1897.

T. P. TREMERE,
Examiner for F. C.

Franklin Circuit Court.

APRIL 9, 1897.

THE BOARD OF COUNCILMEN OF THE CITY OF FRANKFORT, Plaintiff,
versus
L. C. NORMAN, Auditor, &c., Defendants.
} Order.

The plaintiff, by attorney, appeared and offered to file an amendment to its original petition herein, also the County of Franklin appeared and offered to file a petition to be made a party hereto.

135 Franklin Circuit Court.

APRIL 13, 1897.

THE BOARD OF COUNCILMEN OF THE CITY OF FRANKFORT, Plaintiff,
versus
L. C. NORMAN, Auditor, &c., Defendants.
} Order.

Ordered, that the amended petition of plaintiff and the amended petition of Franklin County to be made a party herein, heretofore offered, are both now filed of record, and time, until the first day of the next September term of this court, is given in which the parties may complete pleadings.

STATE OF KENTUCKY,
County of Franklin, } *sct:*

I, Thos. B. Ford, clerk of the Franklin circuit court, certify that the foregoing 58 pages contain a true and complete transcript of all the pleadings, orders and proceedings had in the above-entitled action, as shown by the records of the Franklin circuit court.

Witness my hand as clerk of said court, and the seal thereof, this 11th day of June, 1897.

THOS. B. FORD,
Clerk Franklin Circuit Court.

Fee for copy, $16.25.

136 And on July 5th, 1897, came the complainant and filed its replications to the answer of the defendant City of Louisville and the joint answer of the City of Frankfort and Franklin County herein. Said replications are as follows:

Circuit Court of the United States, Sixth Circuit, District of Kentucky.

PRESIDENT, DIRECTORS, & COMPANY, BANK OF KENTUCKY, Complainants,
vs.
SAMUEL H. STONE, &c., Defendants.

Replication of the Complainant to Answer of The City of Louisville, Defendant.

This repliant, saving and reserving to itself all advantage of exception to the insufficiencies of the answer, for replication thereunto saith that it will aver and prove its said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by its said bill it hath already prayed.

HUMPHREY & DAVIE, *For Com.*

137 Circuit Court of the United States, Sixth Circuit, District of Kentucky.

President, Directors, and Company, Bank of Kentucky, Complainant,
vs.
Samuel H. Stone, &c., Defendants.

Replication of the Complainant to the Joint Answer of the Board of Councilmen of the City of Frankfort and Franklin County.

This repliant, saving and reserving to itself all advantage of exception to the insufficiencies of the answer, for replication thereunto saith that it will aver and prove its said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendants is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by its said bill it hath already prayed.

HUMPHREY & DAVIE. *For Com.*

138 And at another term of our said court, held for its February term, 1898, continued and held, to wit, on May 9th, 1898:

Bank of Kentucky
vs.
Samuel H. Stone, &c.

Came this day the complainant in the above-styled case, wherein Samuel H. Stone is defendant, and filed herein an amended and supplemental bill of complaint, and complainant also filed herein notice duly served of the motion to be made this day, and came Samuel H. Stone, Charles Finley, and G. W. Long, by Richard Ernst, their attorney, and entered appearance to such motion, and also came the City of Louisville and objected to the filing of said supplemental bill of complaint and said motion, and filed herein affidavit to be read in this case, and also came the City of Frankfort and Franklin County and objected to the motion made in this case, to which these defendants are parties, and, the court being advised, it is now ordered, adjudged, and decreed that the said several defendants in the above-styled case are enjoined and restrained from making or certifying any assessment against the complainant for the years 1895, 1896, 1897, and 1898 or any of them, and the defendant The City of Louisville is enjoined and restrained from bringing or maintaining any action against the complainant on account of assessments heretofore made and certified for the years 1893 *or* 1894 or from attempting, by distraining or otherwise, from collecting taxes on said assessments for either of said years. This order is only to stand until Saturday, June 4th, 1898, when the court will announce its decision on pending questions.

To all of which defendants excepted.

139 The amended and supplemental bill above referred to *it* as follows:

Circuit Court of the United States, Sixth Circuit, District of Kentucky.

BANK OF KENTUCKY, Complainant,
vs.
SAMUEL H. STONE, &c., Defendants.
} Amended and Supplemental Bill of Complaint.

The complainant, by way of amended and supplemental bill of complaint, states that the defendants Stone, Finley, and Long are threatening and, unless restrained by this court, will proceed to value the franchise of the complainant in the manner set forth in the original bill of complaint under the act of November 11, 1892, for the year 1898, as well as for the several years mentioned in the nineteenth clause of the original bill of complaint, and are threatening to treat such assessment and valuation just as they are alleged to threaten to treat the assessment for the said years 1895, 1896, and 1897.

The complainant now desires to amend its bill of complaint by inserting the words "and 1898" after the words "1897" in the nineteenth clause of its bill of complaint, and the complainant reiterates all that is said in its original bill of complaint applicable to the years 1895, 1896, and 1897 as equally applicable to the year 1898.

The premises considered, the complainant now prays as in the original bill of complaint, so, however, as to expressly include the year 1898 within the scope of the said prayer, and the complainant prays for all other, further, and proper relief.

HUMPHREY & DAVIE,
For Complainant.

STATE OF KENTUCKY,
Jefferson County,
} *ss:*

140 Oscar Fenley says that he is president of the complainant; that the facts stated herein so far as stated from his personal knowledge are true, and so far as stated from opinion he believes to be true.

OSCAR FENLEY.

Subscribed and sworn to before me this 6th day of May, 1898.

HUSTON QUIN,
N. P. J. C., Ky.

Commission expires with next Kentucky legislature.

141 The affidavit above referred to is as follows:

The affiant, H. L. Stone, states he is city attorney and solicitor for the City of Louisville in the above-styled action, and as such objects to the motion for a restraining order to enjoin and restrain the board of valuation and assessment of the State of Kentucky, made defendant also to this action, from making valuations and assessments of the franchises of the complainant in the above-styled action for the years 1895, 1896, 1897, and 1898 or either of them and certifying the same, as required by the laws of the State of Kentucky, to the authorities of the defendant City of Louisville, for municipal taxation. He further states that, if the defendant City of Louisville shall eventually be adjudged entitled to collect its taxes from the complainant on the valuation and assessment by said State board of the franchises of the complainant, the defendant city, by the lapse of time and delay resulting from such restraining order in the above-styled action, will lose entirely the franchise taxes due the defendant city from the complainant for the years 1895, 1896, 1897, and 1898.

The affiant further states that if said State board is not restrained by this court from making said valuation and assessment against the complainant, as required by the statutes of the State of Kentucky, for the years aforesaid he is willing to enter of record in this action an agreement for and on behalf of the defendant, City of Louisville that the tax bills made out on such assessments as shall be certified by said State board to the city authorities of the defendant city shall not be sued on, and no steps to collect the same shall be made until the defendant city is finally determined in the
142 above-styled action to be entitled to sue on and collect said franchise taxes against complainant, and has heretofore made this proposition to complainant's counsel, and in addition thereto he has proposed to dismiss without prejudice the action brought by the defendant City of Louisville on May 6 and 7, 1898, in the Jefferson circuit court, State of Kentucky, on the franchise tax bill against the complainant due the defendant City of Louisville for the year 1894 and to take no further steps to collect the same until the rendition of the final judgment in the above-styled action.

H. L. STONE.

Subscribed and sworn to before me by said H. L. Stone this May 7, 1898.

My commission expires January 23, 1900.

JNO. F. GROENE,
[SEAL.] *Notary Public, Jefferson Co., Ky.*

And on another day of our said court, to wit, on June 4th, 1898:
It is ordered by the court that the preliminary injunction heretofore granted in the foregoing cause be, and the same is hereby, continued until 25th day of June, 1898.

And on another day of our said court, to wit, on Saturday, June 25th, 1898:

The court, being advised, files its opinion herein. It is therefore adjudged, ordered, and decreed as follows:

1. The demurrer of the defendant The City of Louisville to the bill of complaint is hereby overruled; to which the said City of Louisville excepts.

2. The demurrer of the Board of Councilmen of the City of Frankfort to the bill of complaint is overruled; to which
143 the said defendant excepts.

3. The demurrer of the County of Franklin to the bill of complaint is overruled; to which the said defendant excepts.

4. The demurrer of the defendants Samuel H. Stone, Geo. W. Long, and Charles Finley to the bill of complaint is overruled; to which the defendants excepts.

5. The plea of The Board of Councilmen of the City of Frankfort and The County of Franklin, defendants, to the bill of complaint is overruled; to which the said defendants except.

The defendants The County of Franklin and City of Frankfort offered to file an amended answer; to which complainant objected, and the motion to file is overruled; to which defendants except, and the amended answer is made a part of the record by this order.

6. And thereupon came the complainant, by Humphrey & Davie, counsel, and filed herein replications to the answers of the City of Louisville and the Board of Councilmen of the City of Frankfort and the County of Franklin—

And by consent this cause came on to be heard for final decree.

The complainant read upon the hearing its bill of complaint and its amended bill of complaint herein and several exhibits filed herein, viz:

Exhibit No. 1, being the record of the proceedings in the case of The Bank of Kentucky *vs.* The Franklin County Court and J. W. Gaines, sheriff.

Exhibit No. 2, being the record of the proceedings in the case of Bank of Kentucky *vs.* City of Frankfort.

Exhibit No. 3, also called in the bill Exhibit A, being the
144 resolutions of the stockholders of the complainant accepting the Hewitt bill. It is agreed that these resolutions were filed in due time and in accordance with law.

Exhibit No. 4, also called in the bill Exhibit B, being a record of the proceedings in the case of The Bank of Kentucky *vs.* Armstrong, sheriff, and The Franklin County Court.

Exhibit No. 5, also called in the bill Exhibit C, being the final judgment of the Franklin circuit court in the last-named cause.

Exhibit No. 6, being the record of the proceedings in the case of The Bank of Kentucky *vs.* City of Frankfort.

Exhibit No. 7, also called in the bill Exhibit D, being the final judgment of the Franklin circuit court, entered in pursuance of the mandate of the last-named cause.

Exhibit No. 8, also called in the bill Exhibit E, being the record of the proceedings in the case of The Bank of Kentucky *vs.* R. H. Thompson, &c.

The defendant The County of Franklin read on hearing its answer and the defendant The City of Frankfort read on the hearing record of proceedings in the case of Board of Councilmen of the City of Frankfort *vs.* L. C. Norman, auditor, &c., being called in the record Exhibit 9, and the defendant The City of Louisville read its answer and the stipulation between the complainant and the defendant City of Louisville, filed herein June 25, 1898, together with the ordinances and special statutes therein mentioned and referred to.

And it is now adjudged, ordered, and decreed that the defendants Samuel H. Stone, Charles Finley, and Geo. W. Long be, and they are hereby, perpetually enjoined and restrained from
145 proceeding to value the franchise of the complainant under the act
of November 11, 1892, for the years 1895, 1896, 1897, 1898 or for any subsequent years during the corporate existence of the complainant, and are enjoined and restrained from certifying such value to the county clerk of Jefferson county, or to any officer of the city of Louisville, or to the county clerk of Franklin county, or to any officer of the board of councilmen of the city of Frankfort, or the county of Franklin; and the defendants The City of Louisville, County of Franklin, and Board of Councilmen of the City of Frankfort are enjoined and restrained from endeavoring to collect any tax upon any such valuation; and the complainant by making payments in accordance with the Hewitt law is discharged in full from all taxes to be exacted from it under any form or by any authority.

It is further adjudged, ordered, and decreed, by reason of the several pleas of *res judicata* relied on by complainant in this bill and as shown by the exhibits therewith, complainant has an established contract with the Commonwealth of Kentucky under the provisions of article 2 of the act of the General Assembly of the State of Kentucky entitled "An act to amend the revenue laws of the Commonwealth of Kentucky," approved May 17, 1886, and the acceptance of the same by the complainant, the terms of which contract the Commonwealth of Kentucky cannot alter or change without the consent of the complainant; that by the terms of this contract the complainant and its shares of stock cannot during its corporate existence be assessed for taxation for State purposes in a different mode or at a greater rate of taxation than as prescribed in said act, and can be assessed for taxation and taxed for county and municipal purposes only upon its real estate used by it in conducting its business; that the provisions of the present constitu-
146 tion of the Commonwealth of Kentucky and the act of
November 11, 1892, in so far as they are intended to provide or do provide for any assessment or taxation of the complainant's property, rights of property, or franchise or shares of stock, except to the extent and in the manner provided by sections 1, 2, and 3 of article 11 of the said act approved May 17, 1886, and except to assess a tax for county and municipal purposes upon its real estate used in conducting its business, are in violation of and repugnant to the Federal Constitution and void.

And it is further adjudged that the complainant recover of the defendants its costs in this action expended.

And came defendants and prayed an appeal in open court and tendered their assignment of errors; whereupon the court allowed the appeal, and orders the assignment of errors to be filed, and fixes the appeal bond herein at $1,000.

Supplemental answer of the Board of Councilmen of the City of Frankfort, above referred to, is as follows:

Circuit Court of the United States for the Sixth Circuit and District of Kentucky.

PRESIDENT, DIRECTORS, AND COMPANY OF THE BANK of Kentucky
vs.
SAMUEL H. STONE, CHARLES FINLEY, G. W. LONG, City of Louisville, County of Franklin, and Board of Councilmen of the City of Frankfort.
} In Equity.

147 Supplemental answer of the above-named Board of Councilmen of the City of Frankfort, one of the defendants, to the bill of complaint of the above-named President, Directors, and Company of the Bank of Kentucky.

Reiterating its original answer to the said bill, and without waiving demurrer to the jurisdiction or its general demurrer to the bill, but reiterating and relying upon the same, the Board of Councilmen of the City of Frankfort, for supplement to its original answer to the said bill, says as follows:

On January 21st, 1898, the Board of Councilmen of the City of Frankfort filed in the clerk's office of the Kentucky court of appeals a certified copy of the judgment of the Franklin circuit court, rendered on January 21st, 1896, in the case of President, Directors, and Company of the Bank of Kentucky against The Board of Councilmen of the City of Frankfort (set forth on pages 119 and 120 of the printed record herein and relied upon by complainant bank as conclusive of this defendant's rights herein), and prayed an appeal from said judgment to the court of appeals of Kentucky, which appeal was granted and process thereon to Franklin county was issued by the clerk of said court of appeals of Kentucky on January 21st, 1898, which process (summons) was duly executed by the sheriff of Franklin county upon complainant bank on January 21st, 1898. By said summons the complainant bank was duly notified of the pendency of said appeal and was thereby warned to appear before the said court of appeals at its then approaching April term (1898) and show cause why said judgment of the Franklin circuit court should not be reversed for errors therein contained.

148 Said appeal is now pending in the Kentucky court of appeals and will be duly prosecuted to decision in said court by this defendant, and same will stand for hearing in said court of appeals at its next September term.

A certified copy of the said proceedings in the Kentucky court of appeals for reversal and vacation of said judgment is attached hereto and filed herewith as part hereof.

This defendant, Board of Councilmen of the City of Frankfort, submits that there is no equity in the bill; that the injunction prayed for ought not to be granted, and that this court will not exercise jurisdiction of the cause, and prays that said bill be dismissed with cos's.

T. HITER CROCKETT, *City Att'y.*
IRA & W. H. JULIAN,
Att'ys for City of Frankfort.

The undersigned, W. S. Dehoney, says that he is the duly elected and qualified and acting mayor of the city of Frankfort, Ky., and that the statements of the foregoing supplemental answer of the board of councilmen of said city are true.

W. S. DEHONEY, *Mayor.*

Subscribed and sworn to before me by W. S. Dehoney, mayor of the city of Frankfort, on this 21st day of June, 1898.

GUY H. BRIGGS,
Ex. Franklin Co.

COMMONWEALTH OF KENTUCKY:

Pleas before the honorable judges of the court of appeals of Kentucky.

Kentucky Court of Appeals.

BOARD OF COUNCILMEN OF CITY OF FRANKFORT, Appellants,
vs.
149 THE PRESIDENT, DIRECTORS, & COMPANY OF THE BANK of Kentucky, Appellees.

Be it remembered that heretofore, to wit, on the 21st day of January, 1898, the appellants filed on the clerk's office of said court a copy of a judgment, which is in the words and figures following:

Franklin Circuit Court.

PRESIDENT, DIRECTORS, & COMPANY OF THE BANK OF Kentucky, Plaintiff,
vs. Judgment.
BOARD OF COUNCILMEN OF THE CITY OF FRANKFORT, Defendants.

This day came the parties, by their attorneys, and this cause having been heretofore submitted for a judgment conforming to the opinion and mandate of the court of appeals heretofore filed, reversing the former judgment of this court, and the court being now sufficiently advised, it is adjudged that article 2 of the act of the General Assembly entitled "An act to amend the revenue laws of the Commonwealth of Kentucky," approved May 17th, 1886 (Gen.

Stats., chap. 92, art. 2), and the acceptance of the provisions thereof by the plaintiff constituted a contract between the plaintiff and the Commonwealth, which the latter cannot alter or change without the consent of the former, by the terms of which contract the plaintiff cannot, during the continuance of its charter, be assessed for taxation or taxed for State purposes in a different mode or at a greater rate of taxation than as provided for in said act, and can be
assessed for taxation and taxed for county and municipal
150 purposes only upon its real estate used by it in conducting
its business; that the provisions of the present constitution of this State and of the act of November the 11th, 1892 (art. 2, chap. 103, Acts 1891–'2 and '3), in so far as they were intended to provide for any assessment or taxation of plaintiff's property, rights of property or franchise, except to assess and tax for county and municipal purposes its real estate used in conducting its business, are in violation of and repugnant to the Federal Constitution and void; that the board of valuation and assessment provided for in said act of November 11th, 1892, had and has no authority in law to assess or value the plaintiff's franchise for taxation or the auditor to apportion or certify the same or any part of same for county or municipal taxation; that the temporary injunction which was granted in this cause at the commencement of this action is now hereby made perpetual, and the defendant- be, and each of them are, perpetually enjoined and restrained from levying upon or selling any property of the plaintiff for the purpose of collecting any taxes for the city of Frankfort upon the franchise or property of the plaintiff, except taxes upon its real estate used in conducting its business; and it is further adjudged that the plaintiff recover of the defendant-its costs in this action expended.

A copy.
Attest: THOS. B. FORD, *Clerk*,
By J. R. ELLIOTT, *D. C.*

(Upon the filing of said copy of judgment the appellants, by counsel, endorsed thereon the following statement, to wit:)

Court of Appeals, Ky.

BOARD OF COUNCILMEN OF THE CITY OF Frankfort, Appellant,
151 *vs.*
THE PRESIDENT, DIRECTORS, & Co. of the Bank of Kentucky, Appellee.
Application for Appeal.

The Board of Councilmen of the City of Frankfort, filing herewith a copy of the judgment of the Franklin circuit court in the case of President, Directors, & Co. of the Bank of Kentucky *vs.* Board of Councilmen of the City of Frankfort, rendered at the January term of said circuit court, 1896, hereby make application to the clerk of the court of appeals for an appeal from said judgment, with process to Franklin.

T. HITER CROCKETT, *City Att'y.*
W. H. JULIAN,
Att'y for Board of Councilmen of the City of Frankfort.

(Whereupon an appeal was granted in accordance with said statement and the following summons issued:)

Summons on Appeal.

The Commonwealth of Kentucky to the sheriff of Franklin county, Greeting:

We command you to summon the President, Directors, and Company of the Bank of Kentucky to appear before the judges of the court of appeals of Kentucky, at the capitol, in Frankfort, on the first day of their next April term, to show cause, if any it can, why a judgment obtained by it in the Franklin circuit court against the Board of Councilmen of the City of Frankfort at its January term, 1896, should not be reversed for the errors therein contained, as we from its complaint are informed, and have then and there this writ.

Witness A. Addams, clerk of our said court, at the capitol
152 aforesaid, this 21 day of January, 1898.

A. ADDAMS, *C. C. A.*
—— ——, *D. C.*

(Here is the officer's return on the foregoing summons:)

Executed on the Bank of Kentucky by delivering to D. W. Lindsey, president of said bank, a true copy of the within summons January the 21, 1898.

B. F. SUTER, *S. F. C.*,
By P. C. TOWLES, *D. S.*

COMMONWEALTH OF KENTUCKY:

I, Abram Addams, clerk of the Kentucky court of appeals, do certify that the foregoing is a full and complete transcript of the proceedings had upon copy of judgment in the case wherein The Board of Councilmen of the City of Frankfort are appellants and The Pres't, Directors, & Co. of Bank of Kentucky is appellee, as shown by the records of my office.

In testimony whereof I have hereunto set my hand and
[SEAL.] affixed the seal of my office. Done at Frankfort, Kentucky, this 10th day of June, A. D. 1898.

ABRAM ADDAMS,
Clerk Kentucky Court of Appeals.

153 Opinion above referred to is as follows:

Received and filed June 23rd, 1898. Thos. Speed, clerk.

Circuit Court of the United States, District of Kentucky.

PRESIDENT, DIRECTORS, AND COMPANY OF THE BANK OF Kentucky, Complainant, *vs.* SAMUEL H. STONE, CHARLES FINLEY, G. W. LONG, CITY of Louisville, County of Franklin, and The Board of Councilmen of the City of Frankfort, Defendants.	No. 6555.

Before Harlan, circuit justice, and Taft and Lurton, circuit judges.

This is a bill in equity filed by the Bank of Kentucky, a corporation organized under the laws of Kentucky, to restrain the assessment and collection of certain taxes for the benefit of the defendants The City of Louisville, The County of Franklin and The City of Frankfort. Samuel H. Stone is the auditor of public accounts for the State of Kentucky, Charles Finley is the secretary of state, and George W. Long, is the State treasurer; and these three officers, also made defendants herein, constitute the State board of valuation and assessment. The bill avers that the complainant has an irrevocable contract with the State of Kentucky, by which taxes are limited to a certain amount per share upon its stock, and the usual local taxes on its real estate, but that the revenue act of the legislature of Kentucky passed November 11, 1892, impairs that contract and is in violation of the Constitution of the United States.

The case made by the bill is as follows:

The complainant was created a body politic and corporate by an act of the General Assembly of Kentucky approved February 2, 1834. The term of its corporate existence was fixed at thirty years from the date of its incorporation. It was organized to do a banking business and to issue bank notes; it was directed to keep its principal office of discount and deposit in the city of Louisville and to locate a branch at Frankfort, the seat of the government,
154 to aid and manage the fiscal affairs of the State. The State was given a voice in the control of the bank by a provision that the government of the Commonwealth should appoint three of the bank's directors.

By the fifteenth section of the original charter, it was provided that the bank should pay to the treasurer of the Commonwealth twenty-five cents on each one hundred dollars of stock held and paid for in said bank, which should be in full of all tax and bonus, provided that the legislature might increase or diminish the same; but that at no time should the tax exceed fifty cents on each one hundred dollars of stock paid for in said bank. By an act of February 12, 1836, the tax was increased to 50 cents a share. By the act of February 15, 1858, it was provided that the charter privileges of the complainant should continue in full force for twenty years from October 1, 1864, but this extension was declared to be granted on certain conditions. The extension was duly accepted by complainants.

On March 18, 1886, an act called the Hewitt act was passed to make taxation equal and uniform. It provided that all State and national banks should pay into the State treasury seventy-five cents on each share of their capital stock and should in addition, pay into said treasury on their surplus, undivided profit and accumulations in excess of 10 per cent. of their capital stock, a tax at the same rate as that assessed on real property; and that the said taxation should be in full of all tax—State, county and municipal—except that the real estate and buildings, owned and used by the banks in conducting their business should not be exempted from taxation for municipal or county purposes; and that such real estate alone might be taxed for county and municipal purposes, as other real estate was taxed.

The fourth section of the act provided that each of the banks, institutions and corporations, by its proper corporate authority, with the consent of a majority in interest of a quorum of its stockholders at a regular or called meeting thereof, might give its consent to the levying of said tax, and agree to pay the same and waive and release all right under the act of Congress or under the charters of the State banks, to a different mode or a smaller rate of taxation, which consent and agreement to and with the State of Kentucky should be evidenced by writing, under the seal of said bank, and delivered to the governor of the Commonwealth before the next meeting of the legislature; and said agreement and consent being
delivered and in consideration thereof, such bank and its
155 shares of stock should be exempt from all other taxation whatsoever, so long as said taxation should be paid, during the corporate existence of the bank.

On June 25, 1887, within the proper time, at a stockholders' meeting by a vote of the stockholders, the complainants gave their consent to the levying of said tax, and to the waiver and release of all right under their charter to a different mode and a lower rate of taxation, and this consent was duly certified by the governor of the Commonwealth. Since 1887 the complainants have paid this tax under the so-called Hewitt act.

On November 11, 1892, the legislature of Kentucky, under a constitution adopted in 1891, passed an act dealing with the assessment of certain corporations, among others, banks. The act provided that every incorporated bank should, in addition to other taxes imposed on it by law, annually pay a tax on its franchise to the State, and a local tax thereon to the county, incorporated city, town or taxing district where its franchise might be exercised. The auditor, treasurer and secretary of state are by said act constituted a board of valuation and assessment for fixing the value of said franchise. The board is required to apportion the value of the franchise among the several taxing jurisdictions entitled to a share of such tax, and for such apportionment the auditor of State is required, at the expiration of thirty days, to certify to the county clerks of the counties where any portion of the corporate franchise of such banks shall be liable to local taxation the amount thereof liable for county or State taxes; and the county clerk is required to certify the same to the collecting officer of the county and city for collection. If a bank fails to pay its taxes, penalties and interest after thirty days' notice, it is to be deemed guilty of a misdemeanor and upon conviction is to be fined $50 for each day during which the tax remains unpaid—to be recovered by indictment or by civil action—of which the Franklin circuit court shall have jurisdiction. The bill avers that the amount of tax which the complainant would have to pay to the board of valuation and assessment over and above what it has to pay under the Hewitt law would be more than $20,000 per annum.

The complainant avers that the defendants are conclusively estopped by previous litigation to contend in this suit that the complainant has not an irrevocable contract with the State limiting its taxes to those fixed in the Hewitt act; that on February 28, 1894, the complainant filed in the circuit court of Franklin county, 156 that being a court of general jurisdiction, its petition against the County Court of Franklin and R. D. Armstrong, sheriff of said county, setting forth the contracts between complainant and the State in regard to taxes under its original charter, and under the Hewitt law, claiming that no taxes could be collected from the complainant except under the Hewitt law during its charter life, and further that the act of the legislature of November 11, 1892, was unconstitutional and void as impairing the obligation of its contracts aforesaid; that the prayer of the petition was that the court should establish the contracts and should enjoin Franklin county and Armstrong, its sheriff, from attempting to collect any taxes contrary to said contracts; that a decree was entered upon this petition in the Franklin circuit court, adjudging that the act of November 11, 1892, did not violate any contract between the complainant and the State, and the petition for injunction was denied; that the complainant thereupon appealed from the decree to the court of appeals of Kentucky, which court reversed the judgment of the lower court and remanded it to the circuit court of Franklin county for judgment in conformity to its opinion; that the circuit court entered the following judgment on January 21, 1896, which is still in full force and effect:

"This day came the parties by their attorneys, and this cause having been heretofore submitted for a judgment conforming to the opinion and mandate of the court of appeals heretofore filed, reversing the former judgment of this court, and the court being now sufficiently advised, it is adjudged that article 2 of the act of the General Assembly, entitled 'An act to amend the revenue laws of the Commonwealth of Kentucky,' approved May 17, 1886 (General Statutes, chapter 92, article 2), and the acceptance of the provision thereof by the plaintiff, constituted a contract between the plaintiff and the Commonwealth, which the latter cannot alter or change without the consent of the former; by the terms of which contract the plaintiff cannot, during the continuance of its charter, be as-

sessed for taxation or taxed for State purposes in a different mode or at a greater rate of taxation than as prescribed in the said act, and can be assessed for taxation and taxed for county and municipal purposes only upon its real estate used by it in conducting its business; that the provisions of the present constitution of this State and the act of November 11, 1892 (article 3, chapter 103, Acts 1891–'2–'3), in so far as they were intended to provide for any assessment or taxation of the plaintiff's property, rights of property or franchise, except to assess and tax for county and municipal purposes its real estate used in conducting its business, are in violation of and repugnant to the Federal Constitution and void; that the board of valuation and assessment provided for in said act of
157 November 11, 1892, had and has no authority in law to assess or value the plaintiff's franchise for taxation, or the auditor to apportion or certify the same, or any part of the same, for county or municipal taxation; that the temporary injunction which was granted in this cause at the commencement of the action be, and the same is now, made perpetual, and the defendants, Franklin County and R. D. Armstrong, sheriff of said county, be, and each of them are, perpetually enjoined and restrained from levying upon or selling any property of the plaintiff, or in any manner collecting from the plaintiff any taxes for the purposes of Franklin county upon the franchise or property of the plaintiff, except taxes upon its real estate in conducting its business. And it is further adjudged that the plaintiff recover of the defendant its costs in this action expended;"

that a similar suit was filed in the same court by the complainant against the Board of Councilmen of the City of Frankfort, to enjoin it from attempting to collect municipal taxes on the apportioned valuation of the franchise certified to the city by the board of valuation and assessment, setting forth exactly the same objection to the validity of the tax; that the court entered a decree for the defendants, and an appeal was taken to the court of appeals, which reversed the decree of the circuit court and directed that a new decree be entered in conformity with the opinion transmitted; that thereupon the Franklin circuit court entered a judgment enjoining the City of Frankfort in exactly the same terms as that already set forth above in the case against the county court of Franklin; that in February, 1894, the city of Louisville, claiming to act under authority given it by an act of the Kentucky legislature affecting the government of cities of the first class, of which the city of Louisville was the only one, passed an ordinance requiring the banks of the city of Louisville to pay to the city an annual tax of 4 per cent. upon their annual gross earnings; that the complainant failed to pay the tax and thereupon, under the act referred to, a warrant was sued out in a criminal prosecution against the complainant in the city court of Louisville; that the complainant then, in the manner provided by law, filed its petition in the Jefferson circuit court for a writ of prohibition against R. H. Thompson, judge of the police court of the city of Louisville, setting out in

apt terms its incorporation, its original charter, the extensions thereof, the passage of the Hewitt law, the contract entered into in conformity therewith, and claiming the benefit of its said contractual relations with the State; that the petition alleged that the said ordinance of the city of Louisville was void because impairing the obligation of the complainant's
158 contract, and any authority given to the city of Louisville to pass such ordinance was likewise void for the same reason, and prayed that the judge might be prohibited from taking jurisdiction of the proceeding against the complainant for a violation of the ordinance; that issue was joined on this petition by the defendant, The Judge of the Police Court of the City of Louisville; that the City of Louisville, though not a party in name, in that court, was, in reality, the party defendant and appeared by counsel; that the court found the issues in favor of the complainant, entered a judgment accordingly, and, thereupon, the defendant, The City of Louisville, caused an appeal to be taken in its name from the judgment to the court of appeals of Kentucky, in which court the cause was argued by counsel for the City of Louisville and for the Commonwealth of Kentucky; that the court of appeals affirmed the judgment of the Jefferson county circuit court, and sent a mandate of affirmance to the court of original jurisdiction, where it was duly entered; that the averment of the petition in that case upon which issue was joined and which presented the only point for adjudication was as follows:

"The plaintiff states that the said act granting a charter to cities of the first class, and the said ordinance passed in pursuance thereof, are both unconstitutional and void, in that they impair the obligation of the contract between the plaintiff and the Commonwealth of Kentucky, as embodied in its charter as aforesaid, and as embodied in its agreement as aforesaid, made under the revenue law of May 17, 1886, and are a violation of the Constitution of the United States, and especially the section thereof, providing that no State shall pass any law impairing the obligation of a contract.

The plaintiff avers and submits that the said act chartering cities of the first class, and the said ordinance as aforesaid, are both unconstitutional and void, as above set forth; that the granting and acceptance of its charter, and the several acts extending and continuing the same, which were accepted and acted upon by said bank, constituted a contract between the State on the one part and the bank and its stockholders on the other part, continuing during the legal existence of the corporation and, the State never had, and has not now, the right to repeal or annul said agreement or the rights conferred by said charter, limiting the right of the State to impose a tax on said bank without the consent of said bank.

The plaintiff further states that it did give its consent to said act of May 17, 1886, and did, upon the considerations therein recited, waive and release its right under its charter to a different mode or a smaller rate of taxation than is therein provided. Said consent and waiver was made on the belief that the said act was in-
159 tended to put in operation a permanent legislative policy governing the taxation of all banks then existing, which

would accept its provisions, to endure at least during the corporate existence of all said assenting banks. The plaintiff submits that such is the true construction of said act, and that said act and its acceptance constituted a contract which the State cannot annul or repeal, and which is binding on the State in all its departments."

That the petition was demurred to, the demurrer was overruled, and judgment given for plaintiff, and the police judge was prohibited from proceeding with the criminal prosecution against complainant.

The suits of The Bank of Kentucky against The Franklin County Court, against The Board of Councilmen of the City of Frankfort, and against The Judge of the Police Court of the City of Louisville, were argued and heard at the same time by the court of appeals of Kentucky, and were decided by that court in one opinion, filed June 1, 1895, and reported as the bank-tax cases, 97 Ky. Rep., 590. A majority of the court of appeals held that the complainants here had an irrevocable contract with the State, and all its agencies, by virtue of its charter and the extensions thereof, and its due acceptance of the provisions of the Hewitt act and that the act of 1892 impaired the obligation of that contract in violation of the Constitution of the United States, and was, therefore, null and void.

The 19th clause of the bill in the case at bar is as follows:

"The complainant says that the defendants, Samuel H. Stone, Charles Finley, and George W. Long, are threatening and unless restrained by this honorable court will proceed to value the franchise of the complainant in the manner set forth under the act of November 11, 1892, for the years 1895, 1896, and 1897 and certify such value to the county clerk of Jefferson county, to be by him certified to the collecting officer of the city of Louisville and to the county clerk of Franklin county, to be by him certified to the collecting officer of the board of councilmen of the city of Frankfort and the collecting officer of the county of Franklin; that such assessments will be illegal; in violation of the complainant's contract, as has been heretofore in causes between the complainant and the said several defendants adjudged and will be unlawful and violative of complainant's contract, and will cast a cloud over complainant's franchise; cause a multiplicity of suits to be brought against complainant and damage it in a way that cannot be repaired or estimated at the common law; and from these threatened wrongs the complainant has no remedy at the common law, but its only remedy is by a bill in equity; and unless restrained by this honorable court, the
160 defendants, The City of Louisville, The County of Franklin and The Board of Councilmen of the City of Frankfort, will attempt to levy and collect taxes based upon the apportionment of the valuation found by said board of valuation and assessment, and will subject the complainant to the embarrassment of many suits, and cast a cloud upon its franchises and property and an effort will be made to enforce penalties against this complainant, as hereinbefore set out."

It further appears that after the decision in the bank-tax cases, 97 Ky., 590, the personnel of the court of appeals changed somewhat, and when a new series of bank-tax cases, presenting the same question, came to that court, a different conclusion was reached. A majority of the court overruled the prior decision, rendered in 1895 and held that the banks, by accepting the provisions of the Hewitt act, did not acquire any contract rights with the State with reference to the mode or right of taxation and that the act of November 11th, 1892, was valid.

Deposit Bank v. Daviess County, 39 S. W. R., 1030.

The defendants, The Franklin County Court, and The Board of Councilmen of the City of Frankfort, have filed a general demurrer to the bill. The defendants, Stone, Finley and Long, and The City of Louisville, have filed a demurrer, first, to the jurisdiction, and second, for want of equity. By stipulation of counsel for the complainant, defendants were also permitted to file answers without waiving demurrer. The only averment of the answer that is material, is as follows:

"These defendants allege that to grant the injunction prayed for would be (in effect) to enjoin the State of Kentucky, through her officers from executing the State constitution and the present revenue law of the State as construed by the court of last resort of the State. These defendants allege that to grant the injunction prayed for would be (in effect and in fact) to enjoin all proceedings in the State courts for collection of the taxes in controversy, contrary to section 720 of the Revised Statutes of the United States. The laws of Kentucky authorize the collection of taxes by suit in the circuit and county courts of the State. There is now pending in the Franklin circuit court, at Frankfort, Ky., a suit by these defendants against complainant and others for mandamus to compel the State board of assessment to value and apportion complainant's franchise and the auditor to certify the valuation and apportionment thereof to the county clerk of Franklin county, in order to — collection of the taxes now in controversy herein between these defendants and the complainant."

The cause came on for hearing upon the demurrer to the bill, and upon a motion for a preliminary injunction.

161 TAFT, circuit judge, delivered the opinion of the court.:

The bill attacks the validity of the Kentucky revenue law of November, 1892, and seeks relief against its enforcement on the ground that in its application to the complainant bank, it violates that clause of the Federal Constitution which forbids a State to pass a law impairing the obligation of a contract. The case is, therefore, one arising under the Constitution of the United States and as it involves more than $2,000 it is within the jurisdiction of this court. Do the facts stated in the bill bring it within the equity jurisdiction of the court? It is well settled that in the Federal courts an action in equity will not lie to restrain the collection of a tax on the sole ground that it is illegal and void and independently of every other consideration. See *Rich v. Braxton*, 158 U. S., 375, 405. It must ap-

pear from the special circumstances averred that there is no adequate remedy at law and that there is some recognized ground for equity jurisdiction, such as that the enforcement of the tax would lead to a multiplicity of suits or produce irreparable injury. *Ogden City v. Armstrong*, 168 U. S., 224, 236; *Pacific Express Co. v. Seibert*, 142 U. S., 339; *Allen v. Pullman's Palace Car Co.*, 139 U. S., 658, 661; *Shelton v. Platt*, 139 U. S., 591; *Union Pacific R'y Co. v. Cheyenne*, 113 U. S., 516, 525; *Hannewinkle v. Georgetown*, 15 Wall., 547; *Dows v. Chicago*, 11 Wall., 108. What are the remedies at law which the complainant has? If the collecting officers proceed to collect the tax by distraint, the bank may under the duress of the threatened trespass, pay the taxes alleged to be illegal and then sue the city of Louisville, the county of Frankfort, and the city of Frankfort to recover them back. *Railroad Company v. Commissioners*, 98 U. S., 541. It is to be observed, however, that no such action will lie except upon payment under duress. The bank could not simply pay under protest and sue to recover back. Such a payment would be voluntary. There is no statute of Kentucky providing such a remedy as there was in Tennessee in the case of *Shelton v. Platt*. The remedy of paying and suing to recover back in Kentucky exists only when the collecting officer resorts to distraint. But the collecting officers are not obliged to collect the taxes by distraint, they may resort to a simple suit at law for them. In that case, the bank may defend on the ground of the invalidity of the law under which the taxes have been assessed. This remedy except where the taxes are a cloud upon real estate, would ordinarily be adequate, but under
162 the provisions of the revenue law of Nov., 1892, we do not think
it is. By that law the bank on failing to pay the taxes assessed, according to its provisions within thirty days after notice from the collecting officer, is subjected to a penalty of 10 per cent. and to a fine of fifty dollars a day for every day of the delinquency to be enforced by indictment or by civil action. It follows that the remedy of defending a suit at law for taxes under this revenue act is attended with the risk of being compelled to pay fifty dollars a day for every day of the time necessarily consumed in the reasonable litigation of the question of the validity of the tax. By bill in equity, the bank may enjoin the assessment and pending the litigation, however long the delay, no fines or penalties can accrue against the unsuccessful litigant because by the terms of the act they do not begin to accrue until thirty days after notice to pay has been given by the collecting officer. It is manifest that the remedy at law by defending a tax suit in such cases is attended with a great and oppressive burden of risk which is absent in an action in equity. The remedy at law is, therefore, entirely inadequate. *Smyth v. Ames*, 169 U. S., 466, 518; *Pacific Company v. Seibert*, 44 Fed. Rep., 315. It is no answer to say that the payment of the tax and the action to recover it back constitutes an adequate remedy because no such action will lie, as already explained, unless there is a distraint, actual or threatened, and the collecting officer by not distraining may wholly deprive the tax-payer of this remedy. Indeed, the counsel for the city of Louisville vigorously contends that the collecting

officer in that city has no power to distrain for bank taxes. However this may be, it would seem clear that a court of equity will not withhold relief from a suitor merely because he may have an adequate remedy at law if his adversary chooses to give it to him. The remedy at law cannot be adequate if its adequacy depends upon the will of the opposing party. To refuse relief in equity, upon the ground that there is a remedy at law, it must appear that the remedy at law is "as practical and efficient to the ends of justice and its prompt administration as the remedy in equity." *Boyce v. Grundy*, 3 Pet., 210, 215; *Sullivan v. Portland, etc., R. R. Co.*, 94 U. S., 806, 811. And the application of the rule depends upon the circumstances of each case. *Watson v. Sutherland*, 5 Wall., 74, 79.

The practice of the State courts of Kentucky in issuing injunctions against the collection of taxes cannot, of course, be a controlling consideration in determining the limits of the equity jurisdiction in the Federal courts in such cases; for it is 163 settled that if a case "in its essence be one cognizable in equity, the plaintiff—the required value being in dispute—may invoke the equity powers of the proper circuit court of the United States whenever jurisdiction attaches by reason of diverse citizenship or upon any other ground of Federal jurisdiction." *Smyth v. D. Ames*, 169 U. S., 466, 516. But it is worthy of note that the court of appeals of Kentucky has held that in the absence of a statute allowing an action to recover back from the State taxes illegally collected, the remedy by injunction is the only adequate one. In *Gates v. Barnett*, 79 Ky., 295, 296, the court in a suit to enjoin a distraint upon certain tobacco for the collection of taxes said:

"The right to have an injunction to restrain the collection of an illegal tax has been so long recognized and acted upon in this State that it is unnecessary to stop to inquire upon what ground that jurisdiction is exercised by courts of equity. The jurisdiction in this case, however, may be placed upon the ground of the inadequacy of the remedy at law. The officer acting in good faith and under color of right is justified by his process, and is not liable as a trespasser; and as a suit would not lie against the State directly, the only complete remedy is by injunction."

It is by no means clear that distraints or threatened distraints against a bank in view of the character of its business may not involve such serious detriment to its business and incidentally to the public, as to justify equitable intervention. In the case of *Lenawee County Savings Bank v. The City of Adrian*, 66 Mich., 273, 276, a levy upon, and seizure of the bank furniture and fixtures was in progress when an injunction was issued.

Mr. Justice Campbell, speaking for the court, said:

"No point was made in the pleadings or on the argument against the jurisdiction of equity in this case. As the bank was not liable to taxation at all on its personal property and the levy was made in such a way as to directly interfere with its business, the case comes within the analogies of the cases represented by *Osborn v. Bank of U. S.*, 9 Wheat., 738, from which it cannot be readily distinguished. The court below does not appear to have doubted the jurisdiction, although deciding in favor of defendants on the merits."

In *Union Pacific Railway Co. v. Cheyenne*, 113 U. S., 516, 525, Mr. Justice Bradley said:

"It cannot be denied that bills in equity to restrain the collection of taxes illegally imposed, have been frequently sustained. But it is well settled that there ought to be some equitable ground for relief besides the mere illegality of the tax; for it must be 164 presumed that the law furnishes a remedy for illegal taxation. It often happens, however, that the case is such that the person illegally taxed would suffer irremediable damage or be subject to vexatious litigation, if he were compelled to resort to his legal remedy alone. For example, if the legal remedy consisted only of an action to recover back the money after it had been collected by distress and sale of the tax-payer's lands, the loss of his freehold by means of a tax sale would be a mischief hard to be remedied."

The interference with the business of a bank and the injury to its credit caused by a distress against its personal property would seem to be a mischief equally hard to be remedied by a mere suit to recover the money back when thus collected.

If it were necessary we do not think that it would be difficult to sustain the jurisdiction here on the ground that it will prevent a multiplicity of suits. The complainant is seeking to enforce a privilege or exemption which it avers has already been established by the decision of the highest court of the State. To how much more litigation is it to be subjected? Can it not have a remedy in equity against future attempts to invade the privilege already decided to belong to it? In *Osborn v. Bank of the United States*, 9 Wheat., 738, 742, Chief Justice Marshall said: "The single act of levying the tax, in the first instance, is the cause of an action at law; but that affords a remedy only for the single act, and is not equal to the remedy in chancery, which prevents its repetition and protects the privilege." See also *Morris Canal and Banking Co. v. Jersey City*, 1 Beasley, 227; High on Injunction, sec. 530. In addition to the suits for future taxes there is also danger of harrassing suits for fines and penalties which the law permits to be brought for each day's delay in the payment of the taxes after they have been demanded. We have no doubt that if the complainant shows that the act of November, 1892, violates an exemption secured to it by contract, it may have equitable relief.

The second question in the case is that raised by the averment of former adjudication. The case of *New Orleans v. Citizens' Bank*, 167 U. S., 371, it is impossible to distinguish from that before us upon the point of *res judicata*. The Citizens' bank, in New Orleans, was exempted from taxation by an act of the legislature of Louisiana, of January 30, 1836. Extension of its charter was granted and accepted and the question was mooted whether the exemption from taxation continued after extension. The bank brought suit in the

district court of New Orleans to enjoin the collection of a tax
165 against it, on the ground that it had by legislative contract,
exemption from the same. The district court sustained the claim, and enjoined the collection of the tax. A second suit, brought to enjoin another year's taxes, resulted in a similar judgment. Some years later the city of New Orleans having attempted to collect a tax, for a subsequent year, in violation of the exemption, the bank filed its bill in equity in the circuit court of the United States for the eastern district of Louisiana, to enjoin the officers of the State and the city from proceeding to collect the tax and set forth the former adjudication as a conclusive estoppel upon the defendants as to the point of the previous litigation, namely, that there was a contract between the State and the bank, forbidding such taxation. The causes of action were not the same in the case brought in the Federal court and the cases adjudged in the State courts, because they involved taxes for different years, but the thing adjudged, to wit, the existence and binding effect of the contract for the exemption from the particular taxation was the same. The Supreme Court of the United States in this case held that the city of New Orleans and the State taxing authorities were conclusively estopped by the judgments in the State courts from asserting any right to collect the tax in violation of the contract adjudged to exist in the prior litigation and held that the contract having been thus established, the bank was entitled to relief from a violation of that contract by any acts of the State officials acting under the authority of State legislation. It had, theretofore been doubted in some courts whether a judgment in a suit for taxes could be held to be an estoppel against a State or any agency of the State for the collection of taxes in a suit for taxes subsequently accruing, but the question is now definitely settled. Mr. Justice White, in delivering the judgment of the court, in a most elaborate opinion, said:

"The proposition that because a suit for a tax of one year is a different demand from the suit for a tax for another, therefore, *res judicata*, cannot apply, whilst admitting in form the principle of the thing adjudged, in reality substantially denies and destroys it. The estoppel resulting from the thing adjudged does not depend upon whether there is the same demand in both cases, but exists, even though there be different demands, when the question upon which the recovery of the second demand depends, has under identical circumstances and conditions been previously concluded by a
judgment between the parties or their privies. This is the
166 elemental rule, stated in the text books and enforced by
many decisions of this court." * * *

"It follows then, that the mere fact that the demand in this case is for a tax for one year and the demands in the adjudged cases were for taxes for other years, does not prevent the operation of the thing adjudged, if, in the prior cases, the question of exemption was necessarily presented and determined upon identically the same facts upon which the right of exemption is now claimed."

In the case before us there can be no question, from the statement of facts and an examination of the records in previous cases as set forth therein, that the question which was adjudged in them was the identical question presented in the same way and for the same purpose as in the case at bar, to wit; whether there was a contract between the bank and the State which forbade the imposition of higher taxes than those imposed under the Hewitt act. It was distinctly adjudged, in behalf of the complainant against Franklin county and the city of Frankfort, by the court of appeals by the decision rendered in 1895, and by a mandate issued from that court to the Franklin circuit court, that such a contract in fact existed and rendered null and void the provisions of the revenue act of November 11th, 1892, under which the defendants now seek to impose taxes upon the complainant.

It is vigorously pressed upon us, however, that the judgment in the prohibition suit cannot be relied upon by the complainant bank to establish the existence of a contract of exemption between it and the city of Louisville, because there is nothing in the record to show that the issue made by the demurrer to the petition in that suit was the existence of such an exemption and its violation. Neither the mandate of the court of appeals nor the judgment of the Jefferson court states the ground for holding the ordinance void. It is said that some thirty days before the decision of the prohibition case by the court of appeals that court in *Levi v. City of Louisville,* 97 Ky., 394, held that the city of Louisville had no power under the constitution to substitute a license tax for *ad valorem* tax on personal property, and that this ruling must have led to overruling the demurrer to the petition in the prohibition suit, because it necessarily rendered the license tax upon the banks void. The Levi case was a suit by an owner of real estate to enjoin the collection of an *ad valorem* tax on his land on the ground that the city had not imposed such a tax on personalty, but had substituted therefore a license tax upon it,
167 and so had discriminated in favor of personal property and against realty. The court of appeals held that it was the duty of the city to impose an *ad valorem* tax on personalty, and that it could only impose a license tax on a business in addition to an *ad valorem* tax on property. We confess we cannot see how this decision would have determined the question at issue between the complainant bank and the city of Louisville, in the prohibition suit. There was nothing in the petition for prohibition to show that the license tax was a substitute for an *ad valorem* tax upon the personal property of the bank. There was nothing to show that the city of Louisville had not, under the revenue act of 1892 assessed an *ad valorem* tax on the bank's personalty. The license tax was graduated by a percentage, not of the bank's personal property, but of the bank's gross receipts, and did not, therefore, purport to be a taxation on its personal property. The petition was not, therefore, demurrable under the Levi case. When we further consider that the sole ground stated in the petition for a prohibition was that the license tax was void, because it impaired the bank's contract of exemption and so violated the Constitution of the United States, and we find that this was the sole ground considered by the court of

appeals in its opinion, we can have no doubt what was the point adjudged.

The case of *New Orleans v. The Citizens' Bank*, 167 U. S., 371, is relied on to support the contention that a judgment that a license tax violated the bank's contract of exemption cannot be pleaded as *res judicata* in a case presenting the question whether a franchise tax violates its right of exemption. In the New Orleans case, the language of the exemption was "the capital of said bank shall be exempt from any tax laid by the State, or by any parish or body politic under the authority of the State, during the continuance of its charter." It was held that a judgment holding this to be a valid exemption and one which rendered void any attempt to tax its capital or real and personal property used in its business, or to tax its shareholders by imposing an obligation on the bank to pay a tax on its stock for them, did not estop the city and the taxing officers from taxing property held by the bank, but not as capital, or from taxing shares of stock in the hands of the shareholders or from imposing a license tax. This result was reached, as the court points out, because the exemption clause might be entirely valid and inviolable as a contract so as to exempt capital and business property, and yet, under many decisions of the court,
might not prevent the taxation of the shares of stock and
168 upon the same principle might not prevent a tax or license
upon its business. In the case at bar the situation is very different. The provision of the exemption clause in the Hewitt act is that "*such bank and its shares of stock* shall be exempt from all other taxation whatsoever, so long as said tax shall be paid during the corporate existence of such bank." If this exemption clause is irrevocable, it certainly prevents any additional tax upon the property of the bank. That is clear. The former adjudication was that this exemption was irrevocable and prevented the imposition of a tax even in the form of a license tax upon its business. If it prevents a license tax, *a fortiori* does it prevent a direct tax upon its property, tangible and intangible. The tax imposed by the revenue act of 1892 was called a franchise tax, but it has been held, both by the Supreme Court of the United States and of the court of appeals of Kentucky to be in fact nothing but an *ad valorem* property tax. *Henderson Bridge Company v. Kentucky*, 166 U. S., 150; *Adams Express Co. v. Kentucky*, 166 U. S., 171; *Henderson Bridge Company v. Commonwealth*, 99 Ky., 623.

Nor can there be any doubt that the parties to the former adjudications and this litigation are the same. The real parties in interest in this cause among the defendants are Franklin County, the City of Frankfort and the City of Louisville. It is for them that the board of valuation and assessment are about to apportion the estimated value of the franchise and to certify it to them for the collection of taxes. The members of the board of valuation are nothing but their agents created under the law for the purpose of assessing this tax. If the parties in interest in whose favor the tax is to be assessed are bound by the prior litigation, certainly the agencies acting for them under the law are equally bound. In this

light the board of valuation and assessment is in respect to the former judgments privy to the city of Louisville and county of Franklin and the city of Frankfort. There is no dispute that the county of Franklin and the city of Frankfort were parties to the respective suits pleaded as former adjudications. The only controversy which is made is whether the city of Louisville was a party to the prohibition suit set forth in the bill. The original litigation was in form a criminal prosecution against the bank for failure to pay a license. That prosecution was in the name of the city of Louisville. The subsequent litigation, however, was in the form of a proceeding in prohibition against the judge of the city court, in which the criminal prosecution had been conducted, on the ground that that court was exceeding its
169 jurisdiction, because proceeding under a void law. To that writ of prohibition, the city of Louisville was not formally made a party in the Jefferson circuit court, but the litigation before the Jefferson circuit court was conducted by the city of Louisville. It was the real party in interest. It was against it that the writ of prohibition was really directed, for at its instance and for its benefit the criminal prosecution had been begun. When, therefore, an appeal had been taken from the Jefferson circuit court to the court of appeals, the appellants were the City of Louisville and the Judge of the Police Court. By this means the city of Louisville formally made itself a party to the record and the mandate which went down was as binding upon it as upon the judge of its court. Had it attempted to proceed with the prosecution it might have been attached for contempt. Bacon's Abridgement, Prohibition M. It is urged that the litigation was really a criminal litigation and that a judgment in a criminal case cannot be made the basis of a plea of *res judicata* in a civil action. The original case was criminal in form, but the subsequent litigation by writ of prohibition was civil and the real parties to it were the defendant in the police court and the city of Louisville, in whose interest the suit was prosecuted in that court. It would have been entirely proper to make the city of Louisville a party defendant to the original writ of prohibition. Indeed, some courts would hold that it was a necessary party. *Armstrong v. Taylor County Court*, 15 W. Va., 190; *Walton v. Greenwood*, 60 Me., 356. However this may be, the city of Louisville, admitting its interest, did appear as appellant and so made itself a party to the whole litigation, and was so treated by the court of appeals of Kentucky. As the parties to this litigation are the same as those in the former suits except the board of assessment which is in privity with the other defendants and as the point adjudged is exactly the same, we can see no escape from the conclusion that the defendants here are estopped from asserting that the complainant has not a contract exempting it from any other taxation than that provided in the Hewitt law, and, therefore, that the act of November 11, 1892, is an infringement of that contract and impairs its obligation in violation of the Constitution of the United States.

It is suggested that such a conclusion ousts this court from jurisdiction, because it makes the case turn on a question which does

not arise under the laws or Constitution of the United States. We cannot assent to this suggestion. The complainant asserts that it has a contract with the Commonwealth in respect to taxa-
170 tion, the obligation of which the city of Louisville, the city
of Frankfort and the county of Franklin, by the enforcement of a subsequent law of the State are seeking to impair. The defendants deny the existence of such a contract and we must determine whether, as between the parties such a contract exists. It appears that as between the complainant and the defendants, it has been conclusively adjudicated that such a contract exists. This relieves the court from re-examining that question as an original one between the present parties, but it does not free the court from the obligation to enforce the Constitution of the United States, in favor of the complainant by enjoining the enforcement of a law which will impair the obligation of a contract thus conclusively established. The case of *New Orleans v. Citizens' Bank*, 167 U. S., 371, which presented precisely this aspect was begun in the circuit court of the United States and was carried to the Supreme Court of the United States and the jurisdiction by the circuit court was not even questioned.

It is argued that the Federal courts, in considering the question whether a State law impairs the obligation of a contract, will not accept as conclusive the construction which the supreme court of the State has put upon its constitution or laws in determining the existence of a contract and its violation. This is true and is settled by a long line of authorities. *Shelby Co. v. Union Bank*, 161 U. S., 149; *Mobile & Ohio R. R. Co. v. Tennessee*, 153 U. S., 492–'3; *Bryan v. The Board of Education*, 151 U. S., 650; *L. & N. R. R. Co. v. Palmes*, 109 U. S., 256; *Douglas v. Kentucky*, 168 U. S., 488, 502, and cases cited. But the rule has application only where the judgment of the State court is under direct review or in cases in which the opinion of the State court is cited merely as an authority and a precedent. It has no application to a case in which a prior judgment of the State court between the same parties is pleaded or is offered in evidence in a subsequent suit in a Federal court as *res judicata* binding the parties. The State court is as much bound by the Constitution of the United States as a Federal court and is vested with as complete jurisdiction in causes otherwise within its cognizance to decide between the parties before it whether a statute of the State impairs the obligation of a contract. *Robb v. Connolly*, 111 U. S., 624, 637. Such decision embodied in a judgment unreversed is as binding with respect to the point adjudged as if it had been rendered by the Supreme Court of the United States. The distinction between the right and duty of the supreme court to decide for itself the question of contract or no contract without regard to the State decisions, and its obligations to respect the bar of *res*
171 *judicata* as between the parties, is quite clearly made in
Douglas v. Kentucky, 168 U. S., 488, 503, although not expressly commented on. In that case, after maintaining in the strongest terms the obligation of the supreme court to exercise an independent judgment in determining the existence of a contract

and its impairment, and after declining to follow a prior decision of the State court upon the subject, the court considered as a distinct matter the question whether the point had not been formerly adjudged in a State court between the same parties and pointed out with much care that the point of the former adjudication was not the same as that then before the court. The whole discussion would have been wholly unnecessary if, as contended by counsel for defendants, the doctrine of *res judicata* has no application in the Federal courts when the former adjudication is that of a State court upon a question arising under the Federal Constitution.

One other point remains for consideration. The answer pleads that a mandamus proceeding has been instituted in a State court by the city of Frankfort to compel the board of valuation and assessment to certify the apportioned valuation of the franchises of the complainant; that this mandamus proceeding was begun before the action under consideration and is pending, and that the preliminary injunction issued by this court will be in effect an injunction against that proceeding in the State court. We do not think so. It is settled that the pendency of a suit in a State court is no bar to a suit upon the same subject-matter in this court. *City of North Muskegon v. Clark*, 22 U. S. App., 522, and cases therein cited. The injunction which we shall grant may be offered as a defense by the board of valuation and assessment in the court where the mandamus proceeding is pending, just as a judgment rendered in one of two pending suits for the same cause of action may be offered by supplemental pleading in the other. The sufficiency of the defense will be for that court. We do not enjoin any suit at all, by our order; all we do enjoin is the certification of the taxes. That does not require the defendants to disobey an order of any other court or restrain their prosecution of a suit therein.

The demurrer to the bill must therefore be overruled and the preliminary injunction prayed for must issue.

172 Stipulation above referred to is as follows:

In the United States Circuit Court for the Sixth Circuit, District of Kentucky.

PRESIDENT, DIRECTORS, AND COMPANY, BANK of Kentucky, Complainant,
vs.
S. H. STONE, &c., Defendants.
} #6555. Stipulation.

It is stipulated and agreed between the complainant and the defendant City of Louisville that the following ordinances of the said city shall be read as evidence in its behalf on the trial of this action, and the same are made part of the record as though copied and fully set out in this stipulation, to wit:

1. An ordinance entitled "An ordinance relating to assessments," approved August 9, 1893 (Second Biennial Compilation of the Ordinances of the City of Louisville, 1897, pp. 219-222).

2. An ordinance entitled "An ordinance concerning the taxes for the fiscal year ending August 31, 1894," approved December 21, 1893 (*ib.*, pp. 250–252).

3. An ordinance entitled "An ordinance concerning certain licenses in the city of Louisville," approved January 29, 1894, being the same ordinance referred to in complainant's bill requiring banks to pay to the sinking fund of the city of Louisville an annual license of four per cent. (4%) on its gross earnings, a copy of which ordinance is hereto attached, marked Exhibit "L."

4. An ordinance entitled "An ordinance providing for the retrospective assessment of omitted personal property," approved July 9, 1895 (*ib.*, pp. 204, 205).

173 5. An ordinance entitled "An ordinance providing for crediting ad valorem tax bills on personalty by the amount paid to the sinking fund as license on same," approved August 6, 1895 (*ib.*, pp. 205, 206).

6. An ordinance entitled "An ordinance concerning taxes for the fiscal year ending August 31, 1894, on all property omitted from an ordinance entitled 'An ordinance concerning the taxes for the fiscal year ending August 31, 1894,' approved December 21, 1893," approved April 9, 1897 (*ib.*, 252–256).

7. An ordinance entitled "An ordinance regulating the duties of the city assessor with respect to tax bills on assessments made by the State railroad commission and State board of valuation and assessment," approved April 9, 1897 (*ib.*, pp. 28, 29).

It is further stipulated and agreed between the complainant and the defendant City of Louisville that the complainant, Bank of Kentucky, did not pay any sum for license under the said license ordinance approved January 29, 1894, but loaned to the commissioners of the sinking fund of the city of Louisville $8,063.48, for which said commissioners executed their note to complainant March 13, 1894, bearing interest at the rate of four per cent. (4%) per annum, which note said commissioners paid in full to complainant February 21, 1896, with $625.33 accrued interest thereon.

III. It is further stipulated and agreed that the "commissioners of the sinking fund of the city of Louisville" were incorpo-
174 rated and organized, and their powers and duties are prescribed and defined by the statutes and ordinances compiled and embraced in chapter XLIII, sections 1 to 49, inclusive, Burnett's Louisville City Code, 1884, pp. 691–705, an act concerning the deposits of the sinking fund of the city of Louisville, approved May 15, 1883 (Session Acts 1885–'6, vol. 2, p. 677), which ordinances and special statutes are made part of the record as though copied and fully set out in this stipulation, and by sections 3010 to 3024 Kentucky Statutes, edition of 1894.

IV. It is further stipulated and agreed that during the time the complainant's action against R. H. Thompson, judge mentioned in complainant's bill, was pending in the Jefferson circuit court and in the court of appeals of Kentucky on appeal Hon. Henry S. Barker, who appeared as counsel for the defendant in said action, was the employed attorney of the commissioners of the sinking fund of the city of Louisville on an annual salary, as well as the city attorney of said city.

V. It is further stipulated and agreed that the meeting of the next General Assembly after the passage of the Hewitt act on May 17, 1886, was required by statute at the latter date to be and was in fact on Friday, December 30, 1887.

HUMPHREY & DAVIE,
Solicitors for Complainant, Bank of Kentucky.
HENRY L. STONE,
City Attorney, Solicitor for Defendant
City of Louisville.

175 Circuit Court of the United States for the Sixth Circuit and District of Kentucky.

THE PRESIDENT, DIRECTORS, AND COMPANY of the Bank of Kentucky, Complainant,
vs.
SAMUEL H. STONE ET AL., Defendants.
Petition for Appeal and Assignment of Errors.

The defendant- Samuel H. Stone, auditor; Charles Finley, secretary of state, and G. W. Long, treasurer of the Commonwealth of Kentucky; The Board of Councilmen of the City of Frankfort, Ky., and The County of Franklin, conceiving themselves aggrieved by the decree made and entered on the 25th day of June, 1898, in the above-entitled cause, do hereby appeal from said order and decree to the United States Supreme Court for the reasons specified in the assignment of errors, which is filed herewith, and they pray that this appeal may be allowed, and that a transcript of the record, proceedings, and papers upon which said order was made, duly authenticated, may be sent to the United States Supreme Court.

And the said defendants further say that said decree is erroneous and against the rights of said defendants for the following reasons:

First. Because the court erred in overruling the demurrers of each of said defendants to the plaintiff's petition herein.

Second. Because the court erred in overruling the plea of defendants Board of Councilmen of the City of Frankfort and Franklin County to the jurisdiction herein.

Third. Because the court erred in refusing to permit defendants The Board of Councilmen of the City of Frankfort to file the amended answer offered by them herein on the 25th day of June, 1898.

Fourth. Because the court erred (after deciding that complainant did not have any irrevocable contract under and by virtue of article 2 of the act of the General Assembly of the Commonwealth 176 of Kentucky entitled "An act to amend the revenue laws of the Commonwealth of Kentucky," approved May 17th, 1886) in adjudging and decreeing, nevertheless, that by reason of the several pleas of *res adjudicata* relied on by complainants in its bill the complainant has established a contract with the Commonwealth of Kentucky under the provisions of the act aforesaid.

Fifth. Because the court erred in enjoining and restraining the defendants Samuel H. Stone, auditor; Charles Finley, and George W. Long from proceeding to value the franchise of the complainant under the act of Nov. 11th, 1892, for the years 1895, 1896, 1897, 1898, and for all subsequent years until the expiration of complainant's charter, and also erred in enjoining and restraining the County of Franklin and Board of Councilmen of the City of Frankfort from endeavoring to collect any tax upon any valuation from the complainant, and also erred in adjudging that complainant, by making payment of taxes to the State only in accordance with the Hewitt law, is discharged in full from all taxes, and also erred in adjudging that the provisions of the present constitution of the Commonwealth of Kentucky and the act of November 11th, 1892, in so far as intended to provide or do provide for any assessment or taxation of complainant's property, rights of property, or franchise, except under said Hewitt bill, are repugnant to the Federal Constitution and void.

Wherefore the said defendants pray that the said decree be reversed and that the said court may be directed to enter a decree in accordance with the prayer of defendant's answer herein.

W. S. TAYLOR,
Att'y General of the Commonwealth of Kentucky.
IRA AND W. H. JULIAN AND
JAMES POLSGROVE,
Att'ys for Defendants County of Franklin and Board of Councilmen of the City of Frankfort, Ky.

177 The petition for appeal and assignment of errors above referred to are as follows:

In the Circuit Court of the United States for the Sixth Circuit, District of Kentucky.

PRESIDENT, DIRECTORS, & COMPANY, BANK OF KENTUCKY, Complainant,
versus
S. H. STONE, &c., Defendants.
No. 6555.

Petition and Assignment of Errors of the City of Louisville.

To the honorable the judges of the United States circuit court for the sixth circuit, district of Kentucky:

Now comes the petitioner and defendant City of Louisville and states that the record, proceedings, and decree of the court rendered herein June 25, 1898, contain manifest errors to its prejudice, committed as follows, to wit:

I.

The court erred in overruling and not sustaining each ground of its demurrer to complainant's bill and in entertaining jurisdiction of this action, and in not decreeing a dismissal of complainant's bill, because it does not contain any matter of equity whereon this court can ground any decree or give to complainant any relief against this defendant.

II.

The court erred in decreeing that complainant has an irrevocable or irrepealable contract during its corporate existence with the State of Kentucky to pay taxes only in accordance with the Hewitt act of May 17, 1886, by reason of its acceptance of the provisions of said act and the former judgment in the action of complainant, Bank of Kentucky, against R. H. Thompson, judge of the police court of the city of Louisville, in the Jefferson circuit court, common pleas division, July 24, 1894, affirmed by the court of appeals of Kentucky June 1, 1895, by which judgment further proceedings were prohibited in the prosecution of the warrant issued against complainant in said police court for carrying on the business of banking without paying the license fee to the sinking fund commissioners of the city of Louisville in violation of the ordinance of the city 178 of Louisville of January 29, 1894, passed in pursuance of the act of July 1, 1893, for the government of cities of the first class, and in decreeing that the claims and rights of the defendant City of Louisville to ad valorem taxes on the assessments of complainant's franchise or intangible property, made or required to be made by the defendants, who constitute the board of valuation and assessment of the State of Kentucky, under the act of November 11, 1892, were by the judgment aforesaid *res judicata*, and in decreeing a perpetual injunction, enjoining and restraining them from valuing and assessing the franchise or intangible property of complainant, and from certifying such assessments for State and municipal taxation for the years 1895, 1896, 1897, and 1898, and during the corporate existence of the complainant, as required of said State board by said act of November 11, 1892, and in decreeing that the latter act impaired the obligation of said alleged contract between complainant and the State of Kentucky, and thereby violated and was repugnant to the Constitution of the United States.

Wherefore this petitioner and defendant says the said decree of the court herein is erroneous, and prays this honorable court to grant it an appeal to the Supreme Court of the United States, to the end that said decree may be reversed and that said errors may be corrected, and so it will ever pray.

HENRY L. STONE,
City Attorney, Solicitor for Defendant City of Louisville.

The bond above referred to is as follows:

179 Circuit Court of the United States, District of Kentucky.

PRESIDENT, DIRECTORS, AND COMPANY, BANK OF KENTUCKY,
vs.
S. H. STONE ET AL.

Know all men by these presents that we, Samuel H. Stone, Charles Finley, G. W. Long, City of Louisville, County of Franklin, & the

Board of Councilmen of the City of Frankfort, & Fidelity & Deposit Company of Maryland, are held and firmly bound unto the President, Directors, & Company of the Bank of Kentucky in the sum of one thousand dollars, to be paid to the said President, Directors, & Company of the Bank of Kentucky, executors or administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated this 30th day of June, A. D. 1898.

Whereas the above-named Samuel H. Stone, Charles Finley, G. W. Long, City of Louisville, County of Franklin, Board of Councilmen of the City of Frankfort hath prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above-entitled suit by the circuit court of the United States for the district of Kentucky, at Louisville:

Now, therefore, the condition of this obligation is such that if the above-named Samuel H. Stone, Charles Finley, G. W. Long, City of Louisville, County of Franklin, & Board of Councilmen of the City of Frankfort shall prosecute their said appeal to effect and answer all costs if they shall fail to make good their plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

CITY OF LOUISVILLE, [L. S.]
By H. L. STONE, *City Attorney.* [L. S.]
FIDELITY & DEPOSIT CO.
OF MARYLAND,
By WILLIS S. MULLEN,
Gen'l Ag't & Att'y-in-fact. [SEAL.]

Sealed and delivered in the presence of—
HENRY F. CASSIN,
Deputy Clerk U. S. Circuit Court.

180 And on the 25th day of June, 1898, came the parties, by counsel, and filed the following agreement:

Circuit Court of the United States, Sixth Circuit, District of Kentucky.

PRESIDENT, DIRECTORS, & COMPANY, BANK of Kentucky, Complainant,
vs.
S. H. STONE, &c., Defendants.

No. 6555. Agreement for Record on Appeal to Supreme Court.

In order to prevent unnecessary expense and the making of the record larger than is useful, the complainant and the defendants have agreed as follows:

In copying the record in this case on appeal to the Supreme Court of the United States the clerk may omit the following parts thereof:

1. So much of the record in the case of President, Directors, and

Company of the Bank of Kentucky *vs.* City of Frankfort, lately pending in the Franklin common pleas court and being Exhibit No. 2 filed with complainant's bill, as embraces the depositions in said cause. The part to be omitted is this: Beginning on printed page 36, at the words "The following are the depositions on file and read as evidence in this cause," and running down to the words "W. H. Posey, commissioner for Franklin county, Kentucky," on page 48 of the said printed record.

2. The clerk may omit the copy of the opinion of the court of appeals delivered by Justice Bennett, and which begins on printed page 49 of the record and runs through the words "To continue in force an irrevocable contract," on page 56 of the record.

181 This opinion is omitted because it appears in the regular series of reports of Kentucky under the style of Franklin County Court *vs.* Bank of Kentucky, 87 Ky., page 370.

3. The opinion of Chief Justice Pryor and the dissenting opinion by Judge Paynter, beginning on printed page 74 and running through to the words "In this view I cannot concur," on page 100. This opinion and dissenting opinion are omitted because they are printed in the regular series of the Kentucky reports under the style of Commonwealth *vs.* Farmers' Bank of Kentucky, 97 Ky., 590.

4. The clerk need not copy the special acts relating to the sinking fund commissioners of the city of Louisville, nor the ordinances recited and referred to in the stipulation filed herein. The appellants' counsel may print such parts of these acts and ordinances as seem to them relevant in an appendix to their brief.

5. The issue and service of citation on the appeal is hereby waived.

HUMPHREY & DAVIE, *For Com.*
H. L. STONE,
City Attorney, for Defendant City of Louisville.

182 DISTRICT OF KENTUCKY, *ss:*

I, Thomas Speed, clerk of the circuit court of the United States for the district of Kentucky, at Louisville, do hereby certify that the foregoing 181 pages contain a true and correct transcript of the record in the case mentioned in the caption hereof, in accordance with the stipulation of counsel herein, as the same appears from the files and records in my said office.

Witness my hand and the seal of said circuit court this 4th day of August, A. D. 1898.

[Seal 6th Circuit Court, Ky. Dis., U. S. of America.]

THOS. SPEED, *Clerk.*

Endorsed on cover: Case No. 16,941. Kentucky C. C. U. S. Term No., 356. Samuel H. Stone, auditor; Charles Finley, secretary of state, and G. W. Long, treasurer of the Commonwealth of Kentucky; City of Louisville, *et al.*, appellants, *vs.* The President, Directors, & Company of the Bank of Kentucky. Filed August 15th, 1898.